

Legal Status of the Ramsar Convention Secretariat

Overview

- Existing concerns
- Survey of options
- Survey of relevant experiences
- Extent to which options address concerns
- Initial conclusions
- Finalizing analysis

Issues

- Improving the effectiveness of the Ramsar Convention
 - Elevating the profile of the Ramsar Convention internationally
 - Difficulty in obtaining recognition for Ramsar delegation at major international meetings
 - Enhancing synergies and cooperation with other biodiversity-related MEAs
 - Improving implementation, compliance, and enforcement
- Administration
 - Difficulty obtaining travel visas for staff
 - Capacity to contract (difficulties making binding contracts as the Ramsar Secretariat)
 - No staff access to network of logistical and security assistance
 - Lack of Secretariat control over financial procedures
 - Swiss banks required to reject/return to the payee any payment made to any account where the account holder's name, in the case of a legal entity, is not identical to the name under which that legal entity is registered with the "Registre du Commerce." Ramsar must use IUCN name for all transactions.
 - Legal liability of IUCN for Ramsar actions

Issues (cont.)

- Staff issues
 - Differential status of non-Swiss employees under Swiss law (driver's license, bank loans, spouse work permits, etc.)
 - Secretariat staff should represent the diversity of Ramsar Parties
 - Difficulties for spouses of non-Swiss staff to obtain work permits
 - Non-Swiss employees lack taxpayer privileges in communes
- Potential challenges associated with change of legal status (new pension scheme, new host agreement, transfer of staff, etc.)

Brief Survey of Options

- I. Improved status quo (with the Secretariat remaining at IUCN)
- II. The Secretariat becoming an independent international organization
 - a. Secretariat becoming a non-UN independent organization
 - b. Secretariat becoming a UN-affiliated organization
- III. The Secretariat administered by the UN
 - a. Directly administered by UN Secretariat (e.g., UNCCD and UNFCCC)
 - b. UNEP-administered Secretariat
 - c. Administered by another subsidiary UN organ

Survey of Secretariat Experiences

Independent International Organization

- UN World Tourism Organization (UNWTO)

Secretariat directly administered by UN

- Convention to Combat Desertification (UNCCD)

Secretariat administered by UNEP

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Convention on the Conservation of Migratory Species of Wild Animals (CMS)
- Convention on Biological Diversity (CBD)
- [Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal]

Other

- UNEP World Conservation Monitoring Centre (UNEP-WCMC)

UNWTO

- Background
 - 1946/47: Established as an NGO (IUOTO)
 - 1970: Transformed into an independent IGO
 - 2001: Start investigating option of becoming a UN Specialized Agency
 - UNGA Res. (A/RES/58/232) passed March 2004, making UNWTO a Specialized Agency of the UN
- Features of agreement
 - UNWTO to follow UN employment rules and procedures “to the extent feasible”
 - UNWTO agrees to accept Statute of the International Civil Service Commission
 - UNWTO agrees to participate in UN Joint Staff Pension Fund
 - Laissez-passer granted
 - Reciprocal representation (no right to vote)
 - NOTE: relatively large (160+ member states; 350+ Affiliate Members; 110 staff)
- Secretary-General elected by UNWTO General Assembly

UNCCD

- Background
 - Permanent Secretariat authorized by Convention (Art. 23); COP authorized to make specific arrangements
 - COP 1: Bonn chosen as host city; UNSG offer to provide Secretariat support accepted
- Support arrangements provided by UN to Secretariat
 - Follow UN Staff Regulations and Rules and the Common System of salaries and allowances
 - UN procurement services available to Secretariat
 - UNOLA provides Secretariat advisory services
 - Financial Services provided in accordance with Financial Regulations and Rules of the United Nations
 - Overhead charges paid to UN for administering trust funds levied on basis of actual costs incurred; portion of these charges allotted to Secretariat to defray administrative expenses.
- Staff enjoy UN privileges & immunities (UN laissez-passer, etc.; due to delegated authority)
- Executive Secretary nominated by UN Secretary

CITES

- Background
 - Secretariat provided by UNEP (Art. XII)
 - COP empowered to “make such provision as may be necessary to enable the Secretariat to carry out its duties” (Art. XI(3)(A))
 - Previously delegated to IUCN; transitioned back to UNEP administration in 1985
- CITES Secretariat staff are
 - UN staff, administratively and financially subject to UN rules and regulations and UNEP procedures and requirements
 - Afforded UN privileges and immunities
 - Travel on official business under UN laissez-passer authority
 - Exemption from taxation on salary
 - Immunity from immigration restrictions and alien registration procedures
- Secretary-General appointed by UNEP Executive Director, following consultation with Standing Committee
- Unresolved issues regarding Secretariat’s legal capacity (or perceptions of legal capacity)
 - Request for ‘.int’ domain rejected
 - Questions about legal capacity to conclude host government agreement for organizing COP meetings

CMS

- Background
 - Secretariat provided by UNEP Exec. Director (Art. IX); located in Bonn
 - Previously co-located with German Federal Conservation Agency (BfN)
 - 2002: Headquarters Agreement concluded
- Headquarters Agreement between the Secretariat, the UN, and Germany
 - Provided Secretariat *domestic* legal capacity in Germany (contract, institute legal proceedings, acquire property)
 - Issue of *international* legal capacity unresolved (and could not be resolved through a HQ Agreement; international legal capacity stems from the UN's legal capacity)
- CMS Secretariat staff are
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 - Afforded UN privileges and immunities
 - Travel on official business under UN laissez-passer authority
 - Exemption from taxation on salary
 - Immunity from immigration restrictions and alien registration procedures

CBD

- Background
 - Secretariat established by Convention (Art. 24)
 - COP authorized to designate Secretariat from amongst competent international organizations
 - UNEP chosen to carry out Secretariat functions
- 1996 Agreement between the Government of Canada and Secretariat
 - Gives Secretariat domestic juridical personality in Canada
 - Specifies privileges and immunities for Secretariat officials including
 - Immunity from legal process in respect of official acts
 - Exemption from taxation on salary
 - Immunity from immigration restrictions and alien registration procedures
 - Authorizes employment of dependents of Secretariat officials in Canada
 - Recognizes UN laissez-passer held by Secretariat officials
- UNSG appoints Executive Secretary, with COP consultation

UNEP-WCMC

- Background
 - Originally jointly administered by WWF, IUCN, and UNEP
 - Registered as charity in UK since 1988
 - In 2000, became an “executive agency” of UNEP (IUCN and WWF relinquish roles)
- Hybrid arrangement (partial UN/partial “other”)
 - WCMC 2000 (UK-registered) second staff to Centre; subleases Cambridge building to UNEP; remains responsible for employer’s insurance and tax obligations
 - UNEP Executive Director appoints WCMC Director and provides second senior post (2 UNEP staff)
 - Framework document asserts UN privileges and immunities
 - Assertion not realized: staff taxed, no laissez-passer, etc.
 - Legal status of UNEP-WCMC uncertain

Preliminary Assessment of Each Option's Effect on Issues of Concern

Improved Status Quo

- Ramsar Secretariat's legal capacity may be clarified while remaining with IUCN.
 - IUCN could provide a clearer mandate and delegation to do certain things (e.g., contracting).
 - This may resolve some identified problems (inc. power to sign certain contracts as Ramsar Bureau)
- Some issues may be addressed on an ad hoc (and not necessarily permanent) basis, with effort
 - E.g., recognition of Secretariat at international meetings
- Benefits include
 - Possible synergies with IUCN work
 - Reduced bureaucracy vis-à-vis UN options
- Additionally, consultations with IUCN and Swiss Government could address or improve other identified problems:
 - Difficulty obtaining work permits for non-Swiss staff members
- Other identified issues may remain unsolved
 - Access to network of logistical and security assistance
 - Ramsar Secretariat cannot open a bank account
 - Non-Swiss employees losing taxpayer privileges in their communes

Independent International Organization

- Many issues regarding legal capacity would be solved
 - BUT: May need to amend convention
 - Ramsar Art. 8(1): “The International Union for Conservation of Nature and Natural Resources shall perform the continuing bureau duties under the Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.”
- IUCN-related issues would be solved
 - Liability
 - Issues relating to IUCN control of financial procedures would be resolved
- Remaining and new challenges
 - A new pension and health insurance scheme would have to be established
 - Potential need for higher budget to cover new salary scale and social security allowances
 - Need for new headquarters agreement with host government
 - Need to arrange for financial, IT, human resources, and other services

UN-Administered Secretariat

- UN would provide some financial services including banking, disbursements, and auditing; procurement and legal services; access to UN network of logistical and security assistance
- Many issues resolved
 - Travel visas and recognition at international meetings
 - Many staffing issues (UN privileges and immunities extended on a non-discriminatory basis)
 - IUCN-related issues would be solved
- Some issues regarding legal capacity may remain unresolved to the Secretariat's satisfaction
- Potential new issues
 - Transition of existing staff to UN system (inc. issue of existing staff competing for positions)
 - Administrative and bureaucratic work for transition (potential to distract from operational aspects)
 - Appointment of the head of the Secretariat
 - Likely need for higher budget to cover salary scale and (possibly) pension scheme
 - Added bureaucracy

UNEP-Administered Secretariat

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- Many issues resolved
 - Travel visas and recognition at international meetings
 - Many staffing issues (UN privileges and immunities extended on a non-discriminatory basis)
 - IUCN issues
- Some issues regarding legal capacity may remain unresolved to the Secretariat's satisfaction
- Synergies with other biodiversity-related MEAs
- Potential new issues
 - Transition of existing staff to UN system (inc. issue of existing staff competing for positions)
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Analysis of next steps

- For improved status quo
 - Negotiation with IUCN
 - Consultation with Swiss Government
- For independent international organization
 - Likely need to amend the Convention, as well as many steps below

Analysis of next steps

- For transition to administration by the UN or a UN organ
 - Ramsar COP decision
 - Ramsar Secretary General or Standing Committee initiate negotiations with the proposed administrative body
 - Consultation and negotiation (may want to start before the Ramsar COP decision)
 - Decision by counterpart (e.g., UNEP Governing Council decision)
 - Details of agreement would need to be negotiated and worked out and possibly approved by each organization's governing body
 - NOTE: Ramsar COP meets every 3 years

Conclusions

- No option likely to resolve all of the issues of concern.
- Some options are likely to resolve more of the issues than others.
- Some issues are unlikely to be resolved by any option.

Finalizing Analysis of Legal Status

- Legal Instruments
 - Basel Convention
 - World Heritage Convention?
- Potential timing of scenarios
- [Financial considerations – addressed by another consultant]
- Possible operational consequences
- Document to be finalized by end of July