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 UN WTO 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
  – 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
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) seconds 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

• 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 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)
  – 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
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