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“Healthy wetlands, healthy people”

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Note from the Secretariat.

This report was prepared for the Secretariat by legal consultant Mr. Lal Kurukulasuriya. The views and opinions expressed in the report are those of the author and do not reflect those of the Ramsar Secretariat. The document is presented “as is” and has not been edited and formatted by the Secretariat.

**REPORT ON THE LEGAL PERSONALITY OF THE
RAMSAR SECRETARIAT**

20 October 2008

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EXECUTIVE SUMMARY

1. This Report is prepared pursuant to a request made by the Standing Committee at its 37th meeting held in June 2008 to facilitate further evaluation of the three options for addressing the problems facing the Ramsar Secretariat. The summarised comparative tables at paragraph 22 provide information on the manner in which each option impacts on the problems facing the secretariat and the respective costs and benefits.
2. Since secretariats of MEAs do not possess legal personality, every MEA concluded since 1970 makes use of the Secretariat of an existing international organisation to provide its secretariats. The Ramsar Secretariat is provided by IUCN, a global NGO while the secretariats of all other major global MEAs are provided by intergovernmental organisations. The United Nations Environment Programme (UNEP) provides secretariats for most of the MEAs concluded after its creation in 1972 while the United Nations provides secretariats for the UNFCCC and the UNCCD. The secretariats form an integral part of the host organisation in carrying out the secretariat functions. The Secretariat's substantive activities relating to the implementation of the convention are however, directed by the Conference of Parties (COP) or its designated subsidiary body.
3. This division of authority to instruct the Secretariat between the host organisation in regard to administrative matters, and the COP, in respect of substantive and related procedural matters, has been confirmed by the Secretary-General of the United Nations in relation to the UN's role in the affairs of the Climate Change Secretariat.
4. The powers, functions, rights and duties of a MEA Secretariat and its legal personality are determined by the terms of the convention, decisions of the Conference of Parties, delegation of powers by the host organisation and the relevant principles of international treaty law and international institutional law.

CURRENT STATUS OF THE RAMSAR SECRETARIAT

5. Article 8 (1) of the Ramsar Convention designates IUCN to perform its Bureau (now, Secretariat, and hereafter referred to as such) functions until such time as another organisation or government is appointed by a majority of two-thirds of all Contracting Parties.
6. Though the early focus of the convention was on the rapid loss of waterfowl habitats, it has today become an indispensable and integral part of the widening web of major global and regional MEAs that regulate the protection, conservation and sustainable use of natural resources, alongside CITES, CMS, CBD, UNFCCC and UNCCD, and with direct impacts on other MEAs. These changed circumstances have direct relevance to the interpretation of Article 6 of the Ramsar Convention, relating to the scope of the functions of the COP, and to Article 8, relating to the functions of the Secretariat serving it.

7. Several Resolutions adopted at successive sessions of the COP have shaped the evolution of the legal personality of the Ramsar Secretariat. The relevant Resolutions have been analysed in the Report and include: Resolution 3.1 - Secretariat Matters, Resolution 3.3 Establishment of a Standing Committee, Resolution 4.13 - Financial and Budgetary Matters, Resolution 4.14 - Standing Committee, Resolution 4.15 - Secretariat Matters and Resolution 9.10 - Use of the Term and Status of the Ramsar Secretariat.
8. By Resolution 4.15 (1990) the COP provided that the secretariat would follow policies that are determined by the Conference of the Contracting Parties and that the Secretary-General shall be responsible to the Conference of the Contracting Parties, and between meetings of the Conference of the Contracting Parties, to the Standing Committee **for all matters under the Convention except for those requiring the exercise of legal personality on behalf of the Convention** (e.g. establishment of the separate bank account, formal personnel and contract administration, etc.). Formal responsibility to the Conference of the Contracting Parties for these matters rest with the Director-General of IUCN.
9. The actions that are listed in the resolution suggest that they are limited to those where IUCN is required to exercise its legal personality under national law, as it was at that time not clear that the secretariat had such legal personality. Furthermore, the inclusion of the word “formal” to describe the powers of the IUCN Director-General in relation to the exercise of national legal personality, would seem to imply that the Ramsar Secretariat otherwise has substantive autonomy.
10. This conclusion is reinforced by the terms of the agreement that was concluded following the adoption of the above mentioned Resolution at COP 4, between the Director-General of IUCN and the Secretary-General of the Ramsar Secretariat ***by which the DG of IUCN transferred to the Secretary-General of the Ramsar Secretariat most of the powers that were vested in the Director-General of IUCN by the Ramsar Convention and its Conference of Parties. For example, on finance and budgetary matters the Secretary General was authorised by this Agreement to receive and expend Convention funds, including payment of Bureau staff salaries and benefits; purchase and rental of supplies, materials, and equipment; authority to enter into contracts; and otherwise provide for the financial administration of the Convention’s funds by means of a separate Ramsar account.*** On personnel issues, the delegation is equally comprehensive. The Agreement states, “ ***The authority of the Director General of IUCN to select, hire or dismiss Bureau staff and assign salary levels, tasks and job descriptions, set performance standards, evaluate performance, and provide for employee awards, all in line with IUCN personnel provisions is hereby delegated to the Secretary General.***”
11. The above Agreement, attached at Annex 2 is clear evidence of the complete and unequivocal transfer of authority on financial, budgetary, personnel and facility management from the Director General of the IUCN to the Secretary General of the Ramsar Secretariat. Such transfer of authority and attendant powers must be taken to

carry with it the vesting of sufficient legal personality in the secretariat of the Ramsar Convention, to be exercised by its Secretary General, to exercise the authority so delegated.

12. The above mentioned decisions of the Conferences of Parties and the delegation of authority to the Secretary General by the Director General of IUCN makes it abundantly clear in law and fact that the Ramsar Secretariat has such international personality as might be necessary to carry out the functions assigned to it by the Convention as further expanded by the decisions of its Conference of Parties and Standing Committee, including those delegated by the Director General of IUCN..
13. In relation to its domestic legal personality, IUCN enjoys a special legal relationship with Switzerland, under the host country agreement between them, as an international organisation with its headquarters there. Therefore, its staff benefit from some of the privileges accorded to IGOs, such as tax exempt status. Those privileges accorded to the IUCN also apply to the Ramsar Secretariat, its premises and staff. Under the various delegations by IUCN to the Ramsar Secretariat of IUCN's powers flowing from its domestic legal personality, it must be concluded that the Ramsar Secretariat has gradually acquired most attributes of domestic legal personality under Swiss law. (e.g. power to conclude Swiss contracts, etc.)

BECOMING AN INTERGOVERNMENTAL ORGANISATION

14. No global MEA concluded since 1972 has established a new Intergovernmental organisation (IGO) for its institutional machinery. It is, of course, possible in law to establish the Secretariat of the Ramsar Convention as an international organisation, but that would require the amendment of the Ramsar Convention. In such event, the Secretariat would be invested with fuller international legal personality that would enable it to engage in treaty making, have diplomatic immunity before national tribunals, and have legal standing before international legal tribunals. The Swiss authorities have informed that a new federal law (192.12), which entered into force on 1 January 2008, allows Switzerland to register the Ramsar Secretariat as an International Organisation or IGO through the conclusion of a "host agreement" (accord de siège) and that this option also provides diplomatic privileges, immunities.
15. However, this option comes with serious financial and legal consequences. The secretariat would have to establish its own rules and regulations as well as a Social Security scheme, obtain staff insurances, make jurisdictional arrangement similar to the administrative court of the UN or the ILO, obtain a tax exemption for all staff members, including Swiss citizens.
16. Since many of the challenges that the Secretariat faces could be resolved more cost effectively through options 1 & 3, this option may be considered one of last resort.

JOINING THE UNITED NATIONS SYSTEM IN SOME WAY

17. Perhaps the most appropriate IGO within the UN system that the Ramsar Secretariat might wish to consider joining with is the United Nations Environment Programme (UNEP), having regard to the congruent subject matter and expertise of UNEP and the Ramsar Secretariat. UNEP derives the legal authority to provide the secretariats to MEAs from the texts of the respective Conventions or COP decisions taken thereunder and approval from its Governing Council.
18. As the provider of the Secretariats to MEAs, the primary role of UNEP is to ensure that they receive the secretariat support which they need to function effectively. Within the UN system such support includes budget and financial management, human resources management, ICT, contracts and procurement, safety and security, building and facilities management, oversight-audit, legal services, monitoring and evaluation, etc.
19. Secretariats provided by UNEP consist of staff holding UNEP contracts and their executive heads report and are accountable to the Executive-Director for all secretariat matters, excluding substantive matters relating to the implementation of the Convention, for which they remain accountable to their respective governing bodies such as the COP or designated subsidiary bodies.
20. The Executive-Director of UNEP has recently established a regular consultative process between UNEP and the executive heads of the MEAs administered by UNEP, through the mechanism of a MEA Management Team (MMT) to address issues of mutual concern. Having regard to the congruence of subject matter between UNEP, the MEAs to which UNEP provides secretariats and the Ramsar Convention, the Conference of Parties may consider requesting the Executive Director of UNEP to provide the secretariat standing at these meetings in accordance with its rules and procedures.
21. Having regard to the provisions of Article 8(1) of the Ramsar Convention, a decision of two-thirds of the Contracting Parties would be necessary to appoint another organisation to carry out the secretariat functions of the Ramsar Convention. Since such a request would carry with it significant financial implications, the Executive-Director would need to seek approval of its Governing Council to take action thereon.
22. The following are summarised comparative tables that provide information on the manner in which the three options impact on the problems facing the secretariat and costs and benefits of each option.

Table 1.

ADDRESSING THE CHALLENGES FACING THE RAMSAR SECRETARIAT UNDER THE THREE OPTIONS		
CURRENT ARRANGEMENTS WITH IUCN	AS AN INTERGOVERNMENTAL ORGANISATION	JOINING THE UNITED NATIONS IN SOME WAY
<p>International cooperation agreements Can conclude MOUs with governments, UN and other agencies and bodies rather than “binding agreements”</p> <p>Travel visas for Ramsar Secretariat staff Schengen visa available from November 2008 to non-Swiss staff. COP may request Contracting Parties to facilitate issue of visas for travel to or through their countries.</p> <p>Recognition of Ramsar Convention delegations’ credentials The COP may adopt a decision requesting contracting parties, UN, MEAs and IGOs to accord to the Ramsar Secretariat the same status at international meetings as is accorded to Secretariats of other MEAs. Such decision would not be binding on non-parties but would most likely be respected as a request from the COP comprising states parties.</p>	<p>A new federal law (192.12) entered into force on 1 January 2008 which allows Switzerland to register the Ramsar Secretariat as an International Organization or an Intergovernmental Organization (IGO) through the conclusion of a “host agreement” (accord de siège). This option provides diplomatic privileges, immunities, and specific diplomatic instruments that may be a solution to the following problems (but this option has its own shortcomings):</p> <p>Travel visas The legitimization card would be issued by Switzerland, and this card is the best tool for obtaining a visa from consulates in Geneva.</p> <p>Recognition at international meetings The status of an International Organization is likely to raise the profile of the Secretariat, but since it will remain outside the UN system, there is no</p>	<p>Provide same privileges, immunities and other advantages that are offered to other MEAs to which UN system provides secretariats.</p> <p>Tavel visas United Nations provide a Laissez-Passer</p> <p>Recognition at international meetings As a UN body, the Secretariat would have access to all relevant UN meetings with a clear recognition of the staff representing the Secretariat.</p> <p>Work permits for spouses The privileges, immunities and other advantages could include a procedure that facilitates access to job opportunities for spouses/husbands.</p> <p>Making binding contracts The power to make binding contracts will remain with the host organization. Some delegation of this authority is the general practice.</p>

<p>Work permits for spouses of non-Swiss staff members In principle, spouses should normally be able to obtain work permits without major problems, as Switzerland has a policy of facilitating the access of spouses to the labour market (as long as they fulfil the requirements of existing job positions,</p> <p>Making binding contracts on behalf of the Ramsar Secretariat The delegation of authority from DG/ IUCN to SG, expressly delegates the authority to enter into contracts. Accordingly, there should not be a legal impediment to the Secretary General; entering into contracts that are valid within Switzerland under Swiss Law.</p> <p>Legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.) This matter is dealt with in the Service Agreements that are entered into between the IUCN Director-General and the Standing Committee of the Ramsar Convention. Accordingly, the Ramsar Secretariat is responsible for ensuring that adequate insurance coverage is taken to cover such eventualities.</p> <p>Difficulty in paying</p>	<p>guarantee that the UN system will be more accessible than in the present situation.</p> <p>Obtaining work permits for spouses The privileges, immunities and other advantages could include a procedure that facilitates access to job opportunities for spouses/ husbands.</p> <p>Making binding contracts as Ramsar, which has no legal power to sign contracts This option would provide the legal status to make binding contracts.</p> <p>Legal liability for actions (in case of staff disputes, misappropriation of funds, etc.) The Secretariat would be fully responsible for all administrative, financial and human resource matters.</p> <p>New challenges To assume this option, the Secretariat would need to establish the following cumbersome administrative systems independently:</p> <ul style="list-style-type: none"> • Social security scheme (equivalent AVS/1er pilier) and pension scheme (2e pilier), which has to be submitted to the relevant Swiss Authority for validation. 	<p>Legal liability for actions (in case of staff disputes, misappropriation of funds, etc.) The host organization responsible for carrying out secretariat functions would regulate matters relating to liability under its rules and regulations.</p> <p>Logistical and security assistance, UN assistance will be available.</p> <p>New challenges from entering the United Nations system</p> <ul style="list-style-type: none"> • Staff leave the Swiss social security system and integrate the UN social security, insurance, jurisdiction, • leave the Swiss pension schemes such as AVS and 2e pilier. • Non-Swiss staff would have to give up their “Permis B or C” to be replaced by a UN “carte de legitimization”. • After leaving the UN, staff would have to apply again to obtain a new Swiss work or residence permit (for retired persons without a professional income wishing to remain in Switzerland)
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<p>contributions to Ramsar Secretariat Clarify with Swiss authorities if Secretariat could have its own bank account under its new laws. UN-system provided Secretariats have bank accounts of their own, though managed by the host organisation. However, the financial rules and regulations of IUCN will continue to apply to the Secretariat, even if it has its own account.</p> <p>Non-Swiss employees may be losing privileges of being taxpayers in their communes The Swiss authorities confirm that non-Swiss employees of IUCN and Ramsar are exempt from taxes and are not considered taxpayers in their communes. It appears that the only privilege foregone by non-Swiss staff so far identified is access for small children to communal crèches.</p> <p>Lack of staff access when in the field to UN logistical and security assistance Logistical / security support is the responsibility of the member governments. COP may request such support through its decision.</p>	<ul style="list-style-type: none"> • Staff insurances • Jurisdictional arrangement similar to the administrative court of the UN or the ILO, as Swiss tribunals would no longer be competent for the Ramsar Secretariat as an independent international organization; this will also require a validation by the Swiss relevant authority. • To obtain a tax exemption for all staff members, including Swiss citizens, the Secretariat would have to establish an internal system similar to the IUCN system to retain an equivalent tax from the salary of all staff members. 	
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Table 2

COSTS AND BENEFITS OF THE THREE OPTIONS

CURRENT ARRANGEMENT WITH IUCN	AS AN INTERGOVERNMENTAL ORGANISATION	JOINING THE UNITED NATIONS IN SOME WAY
<p><u>BENEFITS</u></p> <p>Action by SC/COP confirming legal position of secretariat and calling upon states, IGOs and the UN system to accord it the same status as that accorded to other major global MEAs could:</p> <ol style="list-style-type: none"> 1. Enable the Ramsar Secretariat to function more effectively 2. Pave the way for the Ramsar Convention to be accorded greater recognition among the Secretariats of other MEAs and improving the image of the Convention and enhance recognition of recognition of wetlands as important assets for conservation and sustainable development. 3. Enable the Ramsar Secretariat to collaborate closely and effectively with the Governments, the United Nations and its agencies and bodies as well as other MEA institutions 4. Strengthen mutual trust and cooperation with the host institutions IUCN <p><u>COST</u></p> <p>Hardly any additional costs, except perhaps funds required for more intensified secretariat activities in promoting international cooperation</p>	<p><u>BENEFITS</u></p> <ol style="list-style-type: none"> 1. This could pave the way for addressing some of the international personality deficits faced by the Secretariat, 2. Strengthen the domestic legal personality attributes of the Secretariat with capacities to enter into contracts and be held fully responsible and legally liable for all administrative, financial and human resource matters. 3. However, since it will be outside the UN-system of MEAs, it will not automatically enhance recognition of the Ramsar Convention within the network of MEAs dealing with wetland conservation and sustainable development <p><u>COST</u></p> <p>Serious financial and legal consequences including having to establish its own rules and regulations and administrative systems independently for pensions, staff insurance as well as jurisdictional arrangements. Also obtain tax exemption for all staff members, including Swiss citizens.</p>	<p><u>BENEFITS</u></p> <ol style="list-style-type: none"> 1. A Trust Fund(s) established at UNEP to hold all funds received by the Ramsar Secretariat managed by Executive-Director of UNEP in accordance to UN rules and regulations. 2. Staff would be recruited by the UNEP Executive-Director and existing staff would become UN staff, subject to the UN staff rules and regulations and entitled to the UN privileges and immunities and to a pension 3. Give Ramsar Convention the same status as other global MEAs thus enhancing its image and facilitate closer cooperation with UNEP and the wider UN-programme of work on conservation of natural resources and sustainability. 4. The Secretariat would no longer be confronted with several of the challenges listed in Part 1 of this report. It must be recognised however, that the secretariat will be subject to the UN/ UNEP rules and regulations and practices in regard to financial, personnel and administrative matters. <p><u>COST</u></p> <ul style="list-style-type: none"> • An administrative fee of 13% would be charged to the Trust Fund(s) to meet the administrative expenses that UNEP May also be other charges. • Please see Annex 5 to the Report for details of the cost of Option3

Table 3
FINANCIAL STATEMENT OF THE COST DIFFERENTIAL BETWEEN OPTIONS 1 AND 3^a
 (Compiled by the Ramsar and UNEP Secretariats. Please see Annex 5 to the Report for the detailed breakdown of salary and core expenditure costs as well as an explanatory note on the basis of computation)

EXPENDITURES (in '000 Swiss francs)	IUCN Administered	UNEP Administered	Comments
Staff Cost	2,588	3,576	
Staff Provision	25		included in UNEP staff cost
Hiring Interns	26		UNEP financial rules does not allow payments of interns
Travel	124	124	
Purchase of equipment	15	15	
IUCN - Admin*	225		included in UNEP 13%PSC
IUCN - HR*	82		included in UNEP 13%PSC
IUCN - IMG*	91		to be clarified by RAMSAR
IUCN Fin/Accounting*	97		included in UNEP 13%PSC
Database	170	170	
Communications	151	151	
Reporting	26	26	
Standing commtt, STRP and Reg Rep support	47	47	
STRP Support Services	206	206	
Support to Regional Initiatives	279	279	
Project Subcontracting/External Grants			
Depreciation			
Auditor's Fees			included in UNEP 13%PSC
Stationery and office supplies	87	87	
Public relations/ Promotion			
Outreach CEPA	30	30	
Hospitality			
Bank Charges			
Miscellaneous			
Provision on outstanding dues	50	50	
Exchange loss	15	15	
Cop related expenses	33	33	
Rent			
Total Expenditure	4,367	4,809	
UNEP 13%PSC	-	625	
Grand Total	4,367	5,434	

NOTES

*Allocation of IUCN charges between the categories not consistent across years

** Includes depreciation, auditors fee, stationary and PR, hospitality and bank charges

^a

From the table it seems clear that the salary cost of a UNEP managed RAMSAR are higher than an IUCN managed RAMSAR. Although those UNEP salary costs were on the high side for estimation purposes this seems to remain so.

The benefit of joining UNEP should be looked elsewhere and the Parties should assess the substantive and administrative benefits. For instance noted that for COP 10 the RAMSAR secretariat is requesting the establishment of a legal advisor post (20%). May be such services could be provided directly by UNEP. The same applies for other new post (IT officer).

Finally to be accurate we would need to know the exact proposed location of the future RAMSAR, which would presumably be the UNEP premises in Geneva.

PART 1 - BACKGROUND TO THE PRESENT STUDY

1. The objectives of this report are to:
 - a. Provide a legal opinion on the current legal status of the Ramsar Secretariat,
 - b. Examine the advantages and disadvantages of three options for its future legal status, and
 - c. Elucidate ways, means and legal procedures to address the challenges faced by the Ramsar Secretariat caused by its current legal status in carrying out its functions.

2. The Ramsar Secretariat, pursuant to Ramsar Standing Committee Decision SC35-32, convened a small study group that identified the following legal obstacles to improving effectiveness in discharging its functions. It is evident that while some of these issues relate directly to the legal and institutional relationships between the Secretariat and the IUCN as well as the Government of Switzerland, they are fundamentally rooted in the legal status of the Secretariat.
 - Frequent difficulty in obtaining travel visas for Ramsar staff without international organisation legitimisation.
 - Difficulty in obtaining recognition of the Ramsar delegation at major international meetings.
 - When in the field, Ramsar staff members do not have access to a network of logistical and security assistance, as UN staff would.
 - Impossibility of obtaining work permits for spouses of non-Swiss staff members.
 - Non-Swiss employees do not pay Swiss salary taxes (by agreement with the Swiss government, the equivalent sum is retained by Ramsar as income) and they may be losing privileges of being taxpayers in their communes. The employees themselves do not benefit from tax-exempt status. [The Swiss tax on “fortune”, as opposed to salary, is not exempted.]
 - Occasional impossibility in making binding contracts as the Ramsar Secretariat actually has no legal power to sign contracts.
 - Legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.). (Budgetary disputes with IUCN, formerly cited as a problem, seem to have been resolved.)
 - Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity for the Secretariat.
 - IUCN controls financial procedures in ways that may not be suitable for the secretariat.

3. Three possible options for addressing the problems arising from the Ramsar Secretariat’s current legal status have been explored by the Ramsar Convention Standing Committee assisted by the Secretariat. These are:
 - a. Obtaining significant improvement in its conditions of operation under IUCN management, including legitimate and authoritative credentials

- regarding the Secretariat officers, e.g.: recognition as an international organisation by UNGA, ECOSOC, etc.;
- b. Obtaining recognition by Switzerland of the Ramsar Secretariat as an international organisation seated in Switzerland;
 - c. Joining the United Nations system in some way.
4. At the 37th meeting of the Standing Committee held on 2-6 June 2008, following extensive discussions on the legal status of the Ramsar Secretariat based on the Secretariat document DOC. SC37-2 and a presentation on the Legal Status of the Ramsar Secretariat made by a legal consultant, the Committee instructed the Secretariat to continue more focused discussion on all three options to the extent possible, as far as funding is available. The present Report has been prepared in response to this request.
 5. In order to meet the objectives set out in paragraph 1 above it is necessary, before considering the substance as well as the pros and cons of the three options, to examine the following legal issues underpinning the legal status of a Secretariat of a Multilateral Environmental Agreement (MEA):
 - a. Explain what is meant by “legal personality” in international law including state practice, as well as in and national law, the various ways in which such legal status is acquired and the rights and duties that attach to a Secretariat of an international treaty that is invested with legal status or personality,
 - b. Examine, through recourse to relevant documents, the current legal status or personality of the Secretariat and to determine whether, and if so to what extent, the challenges that the Secretariat faces could be addressed within this legal framework.
 6. These matters are discussed in Part 2 of the Report while Parts 3 to 5 examine respectively, the three options. Part 6 contains a set of recommendations for the consideration of the Standing Committee. At Annex 1 is a detailed and fully referenced legal opinion on the Law relating to the Legal Status of Multilateral Environmental Agreements. The material in Part 2 of the report, written for the benefit of non-lawyer members of the Standing Committee is based on the legal opinion in Annex 1. The other Annexes deal respectively with the following: Annex 2- Practice of other MEAs relating to legal personality; Annex 3 Addressing secretariat challenges under three options; Annex 4- Costs and benefits of the three options; Annex 5- Comparison of the financial costs of options 1 & 3

PART 2 – LEGAL STATUS OF THE RAMSAR SECRETARIAT

SECTION 1 - LAW RELATING TO LEGAL STATUS

(At Annex 1, is a detailed analysis of the law relating to the legal status of MEA Secretariats. The following is a synopsis of the issues and legal principles involved in determining the legal personality of the Ramsar Secretariat, to facilitate the Standing Committee to make informed decisions relating to the three options being considered for addressing the challenges being faced by the Secretariat. Readers are advised to refer to Annex 1 for the references to quotations contained in this part).

7. A large number of multilateral environmental agreements (MEAs) have been concluded since the first United Nations Conference on the Human Environment and the establishment of the United Nations Environment Programme (UNEP) in 1972. Each of these MEAs has established a hierarchy of institutions such as the conference of parties, subsidiary bodies and a Secretariat. None of these institutions constitute an intergovernmental organisation in the traditional sense.
8. However, the Conference of the Parties (or Meeting of Parties, when it is a Protocol to a treaty) comprising accredited representatives of the contracting parties may be said to constitute the will of the contracting parties. The Climate Change Convention (Art. 7(2)) and the Desertification Convention (Art. 22 (2)) specify that the Conference of Parties is the supreme body of the Convention and empower it to make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. In other MEAs, this status and power of the Conference of Parties may be inferred from its provisions.
9. MEAs invest the COP with a variety of functions and powers. These include acts in relation to internal matters such as establishing subsidiary bodies, deciding on arrangements for meetings, adopting rules of procedure for itself and subsidiary bodies, and providing guidance to those bodies and the Secretariat and the supervision of the implementation of the MEA through its subsidiary bodies and Secretariat. Powers are also conferred to the COP to further develop the legal regime of the MEA by amendment or the adoption of new Protocols. As a body composed of representatives of sovereign States, it is also empowered to act at the external level by adopting arrangements with international organisations and states. Some MEAs also contain a catchall provision authorising the COP to consider any additional action that may be required to fulfil its mandate.
10. Furthermore, there are strong arguments in support of the proposition that the Conferences of Parties could also exercise “implied powers necessary for the functioning of an international institution” endorsed by the International Court of Justice in its advice on the legality of the use of nuclear weapons, where the Court stated: “[T]he necessities of international life may point to the need for organisations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their

activities. It is generally accepted that international organisations can exercise such powers, known as implied powers”.^b

11. International legal personality can enable a state or intergovernmental organisation to engage in treaty making, have diplomatic immunity before national tribunals, and to have legal standing before international legal tribunals. However, legal personality has no predetermined and fixed range of these qualities in international law. International legal personality is vested in an intergovernmental organisation to the extent delegated by other international legal personalities. Therefore, to create an organisation with international legal personality, States need to agree through a constitutive instrument, whether a convention or assembly resolution. The precise content of an international organisation’s international legal personality varies according to the powers that have been expressly granted to it by the agreement of States and the functions that can reasonably be implied because they are considered necessary in order for it to serve its purpose.
12. For the reasons more fully set out in Annex 1- **Law relating to the Legal Status of MEA Secretariats**- it may be stated that the Conference of Parties as the supreme body of an MEA, has international legal personality, within the limits of its express mandate. As Professors Churchill and Ulfstein sum up following an extensive examination of the law and practice relating to the legal status of MEA institutions:., *“In sum, MEAs do not contain any provisions explicitly establishing the international legal personality or treaty-making capacity of their institutions. But both general and specific powers conferred on COPs (and some other bodies) may be interpreted to include such personality and capacity. The doctrine of implied powers as developed for formal IGOs should also be applied to MEA institutions as a source of international legal personality in addition to or in lieu of express powers. That such institutions have international legal personality and the right to enter into treaties is further confirmed by practice.”*^c
13. On the other hand, the legal status of the Secretariat is quite different from that of the Conference of Parties. The legal characteristics of the Conferences of Parties with their extensive powers to make binding decisions in relation to all internal matters such as, establishing subsidiary bodies, adopting rules of procedure and directing the work of subsidiary bodies and the Secretariat, amending an MEA, and even adopting arrangements with international organisations and states must be distinguished at the very outset from the legal status of the Secretariats, which have no such decision-making powers, are directed by the Conference of Parties and are linked to and derive their legal status from the host intergovernmental organisation which creates it or of which it is a part.

^b Legality of the Use by a State of Nuclear Weapons in Armed Conflict 1996 ICJ Rep. 66, 79 para. 25.

^c Robin R. Churchill & Geir Ulfstein, Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law, 94 AJIL 623 (2000).

14. One important feature in examining the legal characteristics of a Secretariat is that, without exception, every MEA either makes use of the Secretariat of an existing international organisation or locates its own rather limited Secretariats within such organisation. With the exception of the Secretariat of the Ramsar Convention which is provided by a nongovernmental organisation (NGO), the International Union for the Conservation of Nature (IUCN), in respect of all other MEAs, the convention itself designates the intergovernmental organisation that will establish the Secretariat or leaves it the COP to decide the appropriate IGO.
15. The functions of the Secretariat are usually set out in the MEA and include providing services to the COP and the subsidiary bodies, as well as States parties, in the implementation and development of cooperation under the agreement, such as conducting studies, preparing draft decisions and providing information to and receiving information from states parties, other MEAs and other organisations.
16. As mentioned above, even though the Secretariat's activities are directed by the COP, it is also, without exception, an integral part of an existing IGO. For the MEAs concluded after 1972, the host IGOs include the United Nations, UNEP and the FAO. For the Ramsar Convention concluded in 1971, the host organisation is the IUCN.
17. It should also be noted that in regard to some MEAs, in particular, the Climate Change Convention, the COP has clarified the respective roles of the Secretariat and host organisation through a decision which states that "the Convention Secretariat shall be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme." The UN Secretary-General has noted in this connection "the Conference of the Parties to the Convention (COP) has an independent legal character and is not a subsidiary of the General Assembly or of any other body."
18. Though the international organisation hosting the Secretariat has no power whatsoever to instruct the COP or its subsidiary bodies, the situation with regard to the Secretariat is very different. The Secretariat is created by the IGO and it employs its officials and is also responsible for its administration, financial and personnel management. The rules and regulations of the host organisation apply without exception to the Secretariat. In 2003, the UN Office of Internal Oversight Services (UNOIOS) defined administrative services to include budget and financial management, human resources management, ICT, contracts and procurement, safety and security, building and facilities management, oversight-audit, legal services, monitoring and evaluation, etc. With regard to the appointment of the head of the Secretariat however, there is usually a requirement in the MEA for the head of the host organisation to do so in close consultation with the Conference of Parties or its designated body, such as a Standing Committee or Bureau.

19. The COP and its subsidiary bodies that direct the substantive functions of the Secretariat in so far as they pertain to the implementation of the MEA must be considered to have exclusive authority to direct the Secretariat in regard to these substantive matters, as well as in regard to related procedural questions.
20. The above mentioned division of authority to instruct the Secretariat between the host organisation in regard to administrative matters and the COP in respect of substantive and related procedural matters has been confirmed by the Secretary-General of the United Nations in relation to the UN's role in the affairs of the Climate Change Secretariat, when he noted: "The head of the Convention Secretariat shall be accountable: (a) to the Conference of the Parties for the implementation of the policies and programme of work approved by the Conference; (b) to the Secretary-General as the chief administrative officer of the Organisation, including for the observance of the Financial and Staff Regulations and Rules of the United Nations."
21. The Secretariat of an MEA is a non-self governing international body and is a subsidiary of the COP. It derives its legal authority from the convention and from decisions of the Conference of Parties, which in turn determines whether, and if so to what extent, it enjoys a legal personality to act at international and national levels. As stated above, MEAs do not usually contain provisions relating to the international legal personality of the conference of parties or the secretariat or its other institutions. Such personality has to be interpreted from the nature and content of the powers conferred on the respective MEA institutions, the powers and functions delegated to the Secretariat by the host organisation read with the relevant law of treaties and international institutions, including the doctrine of implied powers.
22. The following examples provide an insight in to the application of the above legal principles. As provided for in Articles Art. 10 (1) and (2) of the Montreal Protocol a multilateral fund was established by the Meeting of Parties (MOP) and situated in Canada. The MOP, by Decision VI/16, decided that the fund shall enjoy "such legal capacity as is necessary for the exercise of its functions and the protection of its interests, in particular the capacity to enter into contracts, to acquire and dispose of movable and immovable property and to institute legal proceedings in defence of its interests." Subsequently, the multilateral fund and Canada entered into an agreement that regulates the privileges and immunities of the fund, its officials, representatives of member states, and experts. It also established rights and obligations regarding the fund such as, inviolability of the office premises, exemption from taxes and duties, and privileges and immunities necessary for officials to exercise their functions independently.
23. That the agreement between the fund and the Government of Canada is governed by international, rather than domestic, law, is as Churchill and Ulfstein point out inescapable from the following considerations. " *First, from the object and purpose of the Agreement, since the independence purportedly conferred on the fund*

would not be achieved if Canada were entitled to eliminate the privileges and immunities by unilateral domestic acts. Second, the Agreement establishes in several provisions that the fund and its representatives shall have protection similar to that enjoyed by diplomatic missions and agents or international organisations and their representatives (e.g., Arts. 3(2), 6(1) and (2), 9 (1) and (2), and 10). Third, the duty of persons enjoying privileges and immunities under the Agreement to respect the laws and regulations of Canada applies without prejudice to those privileges and immunities (Art. 12), which gives priority to the latter. Finally, under the procedure laid down in the Agreement for settling disputes by means of arbitration, when the parties cannot agree on the third member of the arbitral tribunal, that member shall be appointed by the president of the International Court of Justice. All these factors indicate that the Agreement is an instrument under international law.”

24. In the second example, the Executive Secretary of the Climate Change Convention requested advice from the UN Office of Legal Affairs (UNOLA) to clarify the legal personality and capacity of the Convention Secretariat. The opinion of the UNOLA of December 18, 1995, stated that the bodies established by the Convention “*have certain distinctive elements attributable to international organisations. However, it is clear that none of these bodies is de jure a UN subsidiary organ*”. Specifically in relation to the Secretariat, the opinion reasoned that, “*[i]n view of the distinct nature of the Convention bodies and notwithstanding the fact that the Convention Secretariat is ‘institutionally linked to the United Nations’, the legal regime enjoyed by the United Nations under applicable agreements cannot be automatically attached to the Convention Secretariat.*”
25. To clarify the nature and status of the Secretariat, the UNOLA suggested that the COP or the Subsidiary Body for Implementation adopt a decision “*conferring the required juridical personality and legal capacity upon the Convention Secretariat and accord it such privileges and immunities as are necessary for the fulfilment of its purposes.*” In this context, attention was drawn to the above-mentioned decision by the MOP of the Montreal Protocol conferring juridical personality and legal capacity on the multilateral fund and vesting it with the necessary privileges and immunities.
26. An agreement was subsequently concluded between the United Nations, the Government of Germany, and the Secretariat of the Climate Change Convention, extending the application of the United Nations Volunteers Programme Headquarters Agreement (UNV Agreement) *mutatis mutandis*, to the Convention Secretariat. It provides *inter alia*, that the Secretariat shall have legal capacity in Germany, and that privileges and immunities are accorded to the Secretariat, its officials, representatives of member and observer states, and persons invited to participate in the work of the Convention. This Agreement was approved by the COP in its Decision 15/CP.2, paragraph 1.
27. Whether or not MEA institutions are accorded domestic legal personality is dependent on whether such personality has been vested in the secretariat by its

governing bodies and whether they meet the requirements which the legal system of the host country posits for acceptance of the entity's personality. Treaties often contain provisions relating to the legal capacity of its institutions to carry out functions required for the fulfilment of its objects and purposes, as for example Article 8 of the UNFCCC which states that the functions of the Secretariat shall be, *inter alia*, to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and to perform the other Secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties. It also states that the Conference of the Parties, at its first session, shall designate a permanent Secretariat *and make arrangements for its functioning*. These words indicate the expectation of the Contracting Parties that the Conference of Parties would by their decisions, invest the Secretariat with the legal authority required for it to function effectively at the domestic and international levels. (For further information of the practice of MEAs in this regard, see Annex 2)

28. The following is a summary of principles and practices that relate to the legal status of a secretariat of MEAs.
- a. The Conference of Parties of an MEA is its supreme body which is empowered by the Contracting Parties to make, within its mandate, all decisions necessary to promote the effective implementation of the Convention.
 - b. MEAs do not contain provisions explicitly establishing the international legal personality or treaty-making capacity of their institutions. But both general and specific powers conferred on COPs have been interpreted to include such personality and capacity.
 - c. The supremacy of the COP means that the international organisation hosting the Secretariat may exercise only the powers flowing from this particular function, and has no powers to instruct the COP or its subsidiary bodies nor to affect the functions of the Secretariat that are exclusively within the supervisory authority of the COP or its subsidiary bodies.
 - d. As regards the Secretariat, however, matters are different. Both the COP and the host organisation possess powers in relation to the Secretariat. The COP and its subsidiary bodies must be considered to have the authority to instruct the Secretariat in regard to all substantive matters, as well as related procedural questions, while the host organisation, by the fact that it establishes the Secretariat, is responsible to the COP for all matters that relating to the administration of the Secretariat.
 - e. Within the United Nations system, the definition of administrative services provided by the UN Office of Internal Oversight Services would be applicable in determining the functions for which the host organisation is responsible. They include the following: budget and financial management, human resources management, ICT, contracts and procurement, safety and security,

building and facilities management, oversight-audit, legal services, monitoring and evaluation, etc

- f. The following statement of the Secretary-General on the institutional linkage between the United Nations (which hosts the Climate Change Secretariat) and the Secretariat may be taken to settle the relationship between Secretariats and the host organisation of all MEAs. *“The head of the Convention Secretariat shall be accountable: (a) to the Conference of the Parties for the implementation of the policies and programme of work approved by the Conference; (b) to the Secretary-General as the chief administrative officer of the Organisation, including for the observance of the Financial and Staff Regulations and Rules of the United Nations.”*
- g. The powers, functions, rights and duties of a MEA Secretariat and its legal personality should therefore be determined by the terms of the convention, decisions of the Conference of Parties, delegation of powers by the host organisation and the relevant principles of international treaty law and international institutional law.
- h. It is therefore entirely within the powers and functions of the Conference of Parties to the Ramsar Secretariat to adopt a Resolution clarifying and confirming the legal personality of the Secretariat and to empower it to carry out, under the overall guidance of the Conference of Parties and the Standing Committee, such functions as are necessary for the effective implementation of the Conventions at international and national levels.

SECTION 2 - CURRENT STATUS OF THE RAMSAR SECRETARIAT

- 29. To determine the current legal personality of the Secretariat, it is necessary to analyse the text of the Ramsar Convention and the relevant decisions of the Conferences of Parties as well as the delegation of authority to the Secretary General of the Ramsar Secretariat by the Director General of the IUCN in the context of the applicable international legal norms and principles.

Text of the Convention

- 30. Article 6.1 of the *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, signed on 2 February 2 1971, (Ramsar Convention) provides, *inter alia*, that:
 - i) There shall be established a COP to review and promote the implementation of the Convention;
 - ii) The COP shall be competent to adopt other recommendations or resolutions, to promote the functioning of this Convention
- 31. Article 8 (1) of the Ramsar Convention sets out the functions of the Bureau (now Secretariat). It states that:
 - “The International Union for Conservation of Nature and Natural Resources shall perform the continuing Bureau duties under this Convention until such time as

- another organisation or government is appointed by a majority of two-thirds of all Contracting Parties.”
32. Article 8 (2) sets out a narrow list of the “continuing Bureau duties” that the IUCN was expected to carry out, all of which relate to the convening of Conferences of Parties, maintenance of the List of Wetlands of International Importance and related matters, etc. The duties listed reflect the narrow focus of the Ramsar on Waterfowl at the time it was negotiated in 1971.
33. The Convention title, “*Convention on Wetlands of International Importance especially as Waterfowl Habitats*” is reflective of its early focus on the rapid loss of waterfowl habitats, at a time before the convening the first UN Conference on the Human Environment or the establishment of the UNEP. Over the years, however, the Ramsar Convention has broadened its scope to cover all aspects of wetland conservation and now includes the concepts of wise use of wetlands, sustainability, recognition of wetlands as ecosystems important for biodiversity conservation and the well-being of human communities, as well as their vulnerability to the impacts of climate change and poverty alleviation. Today, the Ramsar Convention has become an indispensable and integral part of the widening web of major global and regional MEAs that regulate the protection, conservation and sustainable use of natural resources, alongside CITES, CMS, CBD, UNFCCC and UNCCD, and with direct impacts on other MEAs, such as the Basel, Rotterdam and Stockholm Conventions, and a large number of regional environmental agreements, such as the regional seas agreements and regional agreements for the conservation of natural resources.
34. These changed circumstances have direct relevance to the interpretation of Article 6 of the Ramsar Convention, relating to the scope of the functions of the COP, and to Article 8, relating to the functions of the Bureau serving it. In dealing with the general rules of Interpretation of the provisions of a treaty, Article 31(3) of the *Vienna Convention on the Law of Treaties* states:
- There shall be taken into account, together with the context: (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.^d
35. It is evident from the evolving practice of the Ramsar Convention institutions and from the context of the significantly changed circumstances in which they operate today, that the COP now has a much broader range of subject matters and functions to deal with than when it was established in 1971. These still serve the principal objective of the Convention, namely, “the conservation of wetlands and their wise

^d Selected Texts of Legal Instruments in International Environmental Law, UNEP 2005. p.63

use”.^e Indeed, this is the objective that the COP has served over the years. This broader range of functions does not, however, necessitate a change in the nature and type of powers or the international legal personality of the COP.

36. In relation to the Bureau, now called the Ramsar Secretariat, the scope and range of the subject matters which it addresses within the framework of its function of serving the COP have also increased correspondingly. However, neither the type of powers nor the international and domestic legal personalities of the Secretariat have changed simply by virtue of the increase in scope of subject matters that it attends to.

Decisions of the Conference of Parties

37. The COP, as a body representative of States parties, in which each Party has powers plenipotentiary to agree to new international laws, can if it so chooses, alter the role and expand or contract the powers of the COP to serve the Parties’ joint purpose as required. In general, States have chosen not to explicitly delegate or transfer their powers to MEA Secretariats so as to give them full or broad international personality. Instead, the international personality of MEA Secretariats has evolved by implication from changes in their functions and modes of operation approved by the COP.
38. Several Resolutions adopted at successive sessions of the COP have shaped the evolution of the legal personality of the Ramsar Secretariat. The relevant Resolutions are set out in chronological order and analysed below.
- COP 3 - Resolution 3.1 - Secretariat Matters
 - COP 3- Resolution 3.3- Establishment of a Standing Committee
 - COP 4 - Resolution 4.13 - Resolution on Financial and Budgetary Matters
 - COP 4 – Resolution 4.14 - Resolution on the Standing Committee
 - COP 4 - Resolution 4.15 - Resolution on Secretariat Matters
 - COP 9 - Resolution 9.10 - Resolution on Use of the Term and Status of the Ramsar Secretariat
39. In commencing, it is noteworthy that at the First Meeting of the COP (Cagliari, Italy, November 1980) the Conference of Parties decided by Recommendation 1:10 (there being no Resolutions at this and other early meetings), that it:
- i) Acknowledged with appreciation the work done by IUCN to perform the continuing Bureau functions according to Article 8 of the Convention;
 - ii) Recognised that the more effective promotion and implementation of the Convention required the provision of an adequately funded, full-time small permanent Secretariat; and
 - iii) Recommended that the Executive Director of UNEP be invited to indicate whether he is prepared to provide the permanent Secretariat for the Ramsar

^e Article 2(6)

Convention, if the Contracting Parties should decide to amend the Convention to make provision for such a Secretariat, with related financial provisions to ensure total funding through mandatory contributions from the Contracting Parties.

40. In making this recommendation, the COP observed that the Secretariat for each of the Conventions on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and on the Conservation of Migratory Species of Wild Animals (Bonn) is provided by the Executive Director of the UNEP, who may be assisted by suitable and technically qualified intergovernmental and non-governmental international or national agencies and bodies. The Ramsar COP recommended that IUCN request the Executive Director of UNEP to invite the Governing Council at its ninth session in May 1981 to consider providing any additional support which might be required for the interim arrangements from the fund of UNEP. It appears from an examination of the decisions of the relevant UNEP Governing Council session, that this matter was not decided upon.
41. At the Second Meeting of the COP (Groningen, Netherlands, 1984), a Task Force was established to consider *inter alia*, the most effective way of providing full Secretariat services to the Contracting Parties in the event of the adoption by a meeting of the COP of an amendment to the Convention providing for an adequate financial regime.
42. At the Third Meeting of the COP (Regina, Canada, June 1987), Resolution 3.1 on Secretariat matters approved the recommendation of the Task Force regarding the provision of a permanent structure for administrative, scientific and technical support by the Bureau under the Convention, and set out the terms and conditions under which such Bureau would function. It is important to highlight some of these terms and conditions as they are relevant to the legal personality of the Secretariat. They included the following:
 - (1) The Bureau shall be an integrated unit of IUCN funded by the Convention budget.
 - (2) It shall comprise a section attached to IUCN and a section attached to IWRB; IUCN salary scales to apply to Bureau staff.
 - (3) It shall perform all the tasks required by the Conference of the Contracting Parties.
 - (4) It shall operate under the supervision of the Standing Committee.
 - (5) It shall be administratively responsible to the Director-General of IUCN who shall be responsible to the Conference of the Contracting Parties for financial and personnel administration.
 - (6) The Convention budget, as approved by the Conference of the Contracting Parties, shall be administered by IUCN.

By Resolution 3.3, a Standing Committee was established as the intersessional executive body which represents the COP between its triennial meetings, within the framework of the decisions made by the COP.

43. At the Fourth Meeting of the COP (Montreux, Switzerland, 27 June-4 July 1990), this arrangement underwent further development. The Standing Committee was specifically mandated to supervise the execution of the Bureau's budget, the conduct of the Bureau's programmes and Bureau personnel matters as well as to provide guidance and advice to the Bureau on the implementation of the Convention.
44. At the same meeting, under Resolution 4.13, the *Ramsar Convention Secretariat's Secretary-General was made responsible for the administration of the Ramsar Convention funds, which function was earlier performed by the Director-General of IUCN.*
45. Significant changes were made to the structure, powers and functions of the Secretariat by Resolution 4.15 on Secretariat Matters, based on the recommendation of the Task Force that the effective functioning of the Bureau for the implementation of programme priorities required a change in Bureau arrangements involving an augmentation of Bureau personnel and a consolidation of the two sections of the Bureau in Switzerland. The decision of the COP reads as follows:

“THE CONFERENCE OF THE CONTRACTING PARTIES

1. APPROVES the provision of a permanent structure for administrative, scientific and technical support by the Bureau under the Convention in the following terms:

- (a) A Convention Bureau shall be established, and co-located with the Headquarters of IUCN, as an independent unit which is funded from the Convention budget and which performs all the tasks required by the Conference of the Contracting Parties;
- (b) On behalf of the Standing Committee, IUCN shall be requested to enter into a cooperative agreement with IWRB for the provision of scientific and technical advisory services for the Bureau;
- (c) *The policy to be followed by the Bureau shall be determined by the Conference of the Contracting Parties and applied under the supervision of the Standing Committee;*
- (d) The Bureau of the Convention shall be comprised of the Secretary-General, appointed by the Director-General of IUCN in consultation with, and on the basis of a proposal from the Standing Committee, and other staff members appointed by the Director-General of IUCN in consultation with and upon the proposal of the Secretary-General;
- (e) *The Secretary-General shall be responsible to the Conference of the Contracting Parties, and between meetings of the Conference of the Contracting Parties, to the Standing Committee for all matters under the Convention except for those requiring the exercise of legal*

personality on behalf of the Convention (e.g. establishment of the separate bank account, formal personnel and contract administration, etc.). Formal responsibility to the Conference of the Contracting Parties for these latter matters shall rest with the Director-General of IUCN.

- (f) The IUCN salary scale (based on the Swiss civil service scale) along with IUCN personnel provisions shall apply to Bureau personnel, subject to the approval of the Standing Committee;
- (g) *The Convention budget, as approved by the Conference of the Contracting Parties, shall be administered by the Secretary-General.* Funds shall be disbursed according to budgetary provisions and instructions given by the Conference of the Contracting Parties, or as appropriate, by the Standing Committee; and
- (h) IUCN shall keep a separate bank account for all income received and expenditures incurred in the performance of Bureau duties under the Convention. Annual audits shall be carried out in accordance with procedures mandated by the Conference of the Contracting Parties;
(Provisions of particular importance to the legal status of the Secretariat have been italicized)

46. Accordingly, the present Ramsar Bureau was established as an independent unit funded from the Convention budget to perform all tasks required by the COP. It is co-located with the Headquarters of IUCN. The Secretary-General, is appointed by the Director-General of IUCN, though the latter's powers in this appear to be nothing more than formal, having regard to the fact that Resolution 4.15 para. 1(d) provides that such appointment would be made "in consultation with, and on the basis of a proposal from the Standing Committee". The Bureau is responsible to the COP and, between meetings of the COP, to the Standing Committee for all matters under the Convention, except those requiring the exercise of legal personality (e.g. establishment of the separate bank account, formal personnel and contract administration, etc.). Formal responsibility to the COP for these latter matters rests with the Director-General of IUCN.
47. The kind of actions set out that require IUCN to exercise its legal personality is, it will be observed, limited by implication to the exercise of legal personality under *national* law (e.g. establishment of the separate bank account, formal personnel and contract administration, etc.). Furthermore, the inclusion of the word "*formal*" to describe the powers of the IUCN Director-General in relation to the exercise of national legal personality, implies that the Ramsar Secretariat otherwise has substantive autonomy.
48. It is important to note in this regard that the Government of Switzerland has informed the Secretary General that a new federal law (Loi fédérale du 22 juin 2007 sur les privilèges, les immunités et les facilités, ainsi que sur les aides financières accordés par la Suisse en tant qu'Etat hôte (Loi sur l'Etat hôte, LEH; SR192.12) entered into force on 1 January 2008. This allows Switzerland to conclude with the

Ramsar Convention a “host agreement” (accord de siège) and provide diplomatic privileges immunities, and specific diplomatic instruments.

49. The Ramsar Secretariat, being a body established to serve a COP comprising representatives of sovereign States, has such international personality as might be implied as necessary to serve its function for the COP. It is, in fact, the more autonomous international actor. IUCN does not have apparent personality under international law as its membership comprises mainly of non-governmental organisations and is therefore itself, a non-governmental organisation rather than an intergovernmental body. Accordingly, it could not exercise such personality on behalf of the Ramsar Secretariat.
50. At the Ninth Meeting of the COP (Kampala, Uganda), Resolution 9.10 provided that, in its external relations, the Ramsar Bureau may use the term “Ramsar Secretariat” in its official statements and documents when such a descriptor is considered to be more suitable. The Resolution added that such descriptor would not affect the Bureau’s functions as provided for in the Ramsar Convention and related decisions and Resolutions of the Convention bodies.
51. There is a distinction between the *functions* of the Secretariat and the *legal personality* required to carry out such functions. The decision of the Parties to use the descriptor “Ramsar Secretariat”, although not affecting the Secretariat’s functions, does reflect its elevated status. As a decision taken by the Ramsar Convention’s Contracting Parties, it reflects their recognition of the Secretariat’s equivalence in status to other MEA Secretariats in the implicit attribution of international personality.
52. It is therefore evident that the Ramsar Secretariat is attributed with some aspects of international legal personality
53. The attribution of domestic legal personality in the secretariat would depend on the nature of activities that its governing bodies entrust to it and a corresponding decision of the host government, Switzerland. Although Switzerland is one of the Contracting Parties, there is no intention implicit in the use of the term “Ramsar Secretariat”. Indeed, other MEA Secretariats also lack independent domestic legal personality as they are hosted by other IGOs, except to the extent such personality is implied by the actions of its respective COPs and recognised by the host government.
54. In light of the past uncertainty, and to enable the Ramsar Secretariat to better “perform all the tasks required by the Conference of the Contracting Parties”, the COP could, if it so decides, specify by Resolution the essential aspects of the legal status of the Secretariat. These might include the attribution of international legal personality for the issue of international civil service credentials for Ramsar officials and the attribution of powers to conclude informal cooperative

arrangements with other MEA Secretariats. The COP might also request that the Swiss Government to recognise the domestic legal personality of the Ramsar Secretariat for formal purposes. However, the disadvantage of this is that it may encumber the Secretariat with additional administrative responsibilities currently discharged by IUCN, such as the management of accounts and audits, tax returns, public liability, management of staff, etc.

Decisions of the Standing Committee

55. In Decision SC35-32 (2007), the Standing Committee “agreed to seek the views of the IUCN Commission on Environment Law, UNESCO, and UNEP on the legal status of the Secretariat and invited interested Parties to collaborate, and it called on the Secretariat to provide a more informative and comprehensive paper on the problems and options for solutions for its next meeting.
56. SC36 examined the proposals contained in Doc. SC36-15 and made the following decision: “Decision SC36-12: The Standing Committee noted the work in progress regarding the legal status of the Convention and urged continued dialogue with Switzerland, IUCN, UNEP, and UNESCO – the Committee requested the Secretariat to provide additional information on three available options to improve its legal status (i.e. (a) improvement of management conditions under IUCN, (b) recognition as an IGO Secretariat by Switzerland, and (c) independent IGO status within the United Nations), including financial implications, that will permit SC37 to make a recommendation to COP10 on this matter.”
57. At SC 37 held on 2-6 June 2008, the Standing Committee had before it Doc SC 37-2 on the Legal Status of the Ramsar Convention Secretariat and Doc. SC37-3 a Draft Resolution X-00 – Facilitating the work of the Ramsar Secretariat staff at international level. The SC also heard a legal analysis of the issues and possible responses from a Legal Consultant. Following extensive discussion of the possible consequences of the three available options and the possible way forward through a draft Resolution to be placed before COP 10, the SC instructed the Secretariat to continue more focused discussions on all three options to the extent possible as far as funding is available and to report to SC 38 to be held in the lead up to COP 10.

Agreements governing relationship with IUCN

58. The record of agreements between the IUCN Director-General and the Ramsar Standing Committee sets out the terms of the administrative relationship of the Ramsar Secretariat with IUCN. These articulate various delegations from IUCN to the Ramsar Secretariat of powers to administer and manage its affairs. *Each reflects the growing autonomy of the Ramsar Secretariat.*

Delegations of administrative power from IUCN to Ramsar

59. The agreement dated 29 January 1993, between the Director-General of IUCN and the Secretary-General of the Ramsar Secretariat transferred to the Secretary-General of the Ramsar Secretariat most powers that were vested in the Director-General of IUCN by the Ramsar Convention and the COP. Its preamble states that:
1. In 1971, IUCN accepted the role set out in Article 8.1 of the Ramsar Convention to perform the continuing Bureau duties under the Convention until such time as another organisation or government is appointed by a majority of two-thirds of all contracting Parties.
 2. In 1987, IUCN accepted the decision of the Third Meeting of the Ramsar COP and established an integrated unit within IUCN, headed by a Secretary-General, who would be administratively responsible to the Director-General of IUCN who was in turn responsible to the COP for financial and personnel administration.
 3. In 1990, the IUCN Director-General concurred with the decision of the Fourth Meeting of the COP, whereby:
 - a. The Bureau was transformed into an independent unit co-located with the Headquarters of IUCN.
 - b. The Ramsar Secretary-General would have sole responsibility for administration of Ramsar Convention funds and for all administrative matters other than those requiring the exercise of legal personality.
 - c. For those latter matters referred to at (2) above, *formal* responsibility rests with the Director-General of IUCN.
 - d. The Standing Committee would supervise all personnel issues within the Secretariat.
 4. That the development of the Convention over the years including increased membership from countries throughout the world, and an expanded conservation programme, has led the Standing Committee to seek increased authority and flexibility for the Secretary-General in the implementation of the Convention's programme.

Delegation: financial and budgetary

60. Accordingly, in 1993 the Director-General of IUCN transferred to the Ramsar Secretary-General the authority, functions, rights and duties for financial and budgetary matters, as follows:
1. To receive and expend Ramsar Convention funds, including payment of Bureau staff salaries and benefits;
 2. To purchase and rental of supplies, materials, and equipment;
 3. Authority to enter into contracts;
 4. Authority to otherwise provide for the financial administration of the Convention's funds by means of a separate Ramsar account; and
 5. To purchase services from IUCN to assist with financial administration, with the approval of the Standing Committee.

61. The limitation placed on the financial and budgetary delegation of authority concerns “the right to impose limitations upon the above delegation of authority, subject to the agreement of the Standing Committee, or to request the Standing Committee for a review of Bureau financial practices by the Standing Committee or an outside agency”. This was expressly because the exercise of this authority reflects upon the fiscal and institutional integrity of IUCN.

Delegation: personnel management

62. In relation to personnel management, the delegation provided that the Ramsar Secretary-General may:
1. Select, hire or dismiss Bureau staff and assign salary levels, tasks and job descriptions.
 2. Set performance standards, evaluate performance, and provide for employee awards, all in line with IUCN personnel provisions.
 3. Classify all staff positions within the Bureau, except that of the Secretary-General, in consultation with the Director-General, in accordance with IUCN classification standards. (This was intended to assure that similar positions in the two bodies are salaried at the same level and that transfers of staff between IUCN and the Bureau are not impeded.)
63. It was also agreed that the Standing Committee may request the IUCN Director-General to suspend certain IUCN personnel provisions for Bureau staff in view of Convention finances.
64. Arrangements were also made for enhanced cooperation between IUCN and the Ramsar Secretariat through participation in each other’s management meetings.
65. Limitations placed on this delegation of authority in regard to personnel matters concerned the selection or removal of, or changes to conditions of service of, the Ramsar Secretary-General, which requires agreement with the Standing Committee. As with the limitation in regard to financial matters and for the same reasons, the Director-General of IUCN reserved the right to impose limitations upon the above delegation of authority, subject to the agreement of the Standing Committee.

Delegation: facility management

66. On 6 November 1991, the Director-General of IUCN and the Chairman of the Ramsar Standing Committee signed an MOU on Headquarters Facilities. It provided for allocation of space within the new IUCN Headquarters Building for the Ramsar Bureau, appropriate indication on the building and its grounds to reflect the fact that the facility was also the home of the Bureau, reimbursement by the Ramsar Bureau of its fair share of the cost of maintenance, heating, lighting, and ventilation, and the possibility to contract for other agreed costs and services. Provision was also included for consultations between the Director-General of

IUCN and the Secretary-General of the Ramsar Bureau in the case of any dispute or request by the latter for additional space in the building.

67. Requests for reduced Bureau space usage or for an expansion of Bureau offices, either within the facility or external to it, shall be the subject of written agreement between the Director-General of IUCN and the Standing Committee. This agreement also covered the authority for facility management for space within the IUCN Headquarters Building assigned to the Bureau, including for office arrangements and equipment and sitting of staff members. It was also agreed that the Ramsar Secretary-General may, with the approval of the Standing Committee, purchase facility services from IUCN.
68. Limitations in this delegation related to the fact that the Ramsar Secretariat used a common building and was bound by Swiss law. Accordingly, the Ramsar Secretary-General is not authorised to waive or abridge those regulations imposed by Swiss law upon the IUCN Headquarters Building for reasons of health, safety, or access to the disabled. It was also agreed that the Ramsar Secretary-General shall agree with the Director-General of IUCN on matters such as the maintenance, fittings, decoration, use of common space or other issues relating to the Headquarters Building where a uniform approach is necessary. The Director-General reserves the right to advise the Standing Committee of any space usage viewed as inappropriate or inconsistent with general space usage within the facility and may impose limitations upon the above delegation of authority, subject to the agreement of the Standing Committee.
69. The Tables at Annex 2 provide a brief survey of relevant Articles of several MEAs, dealing with matters germane to the question of the legal personality of their Secretariats, and actions taken by the Conferences of Parties and Secretariats to confirm such legal status. The following conclusions will be evident from the uniform and consistent practice of these MEA institutions.
 - a. That the institutions created by MEAs (Conferences of Parties, subsidiary bodies, Secretariats) have legal personality to carry out the functions and responsibilities entrusted to it by the respective conventions and decisions of their governing bodies.
 - b. The scope of the legal personality of the respective institutions is determined by the relevant provisions of the Conventions, decisions of the Conferences of Parties, legal theory, in particular the doctrine of implied powers and accords with the host institution, host country and other institutions and governments.
 - c. The Secretariats of these MEAs enjoy legal personality as is necessary for it to carry out its functions and responsibilities and as recognised by the host government as having the capacity to contract, to acquire and dispose of moveable and immovable property and to sue and be sued.

70. This position has, in respect of several MEAs, been explicitly provided for or clarified by the respective Conferences of Parties and/ or been confirmed or acted upon by the host governments through host country arrangements

PART 3 - OPTION 1

OBTAINING SIGNIFICANT IMPROVEMENT OF THE CONDITIONS UNDER IUCN MANAGEMENT, INCLUDING LEGITIMATE AND AUTHORITATIVE CREDENTIALS REGARDING THE RAMSAR SECRETARIAT

71. The Ramsar Convention is one of a large number of MEAs concluded since 1970, none of which set up an intergovernmental organisation with legal personality but that, instead and with the exception of the Ramsar Convention, used existing intergovernmental organisations as hosts (UN, UNEP, FAO etc.). The Ramsar Secretariat alone was attached to a global Non-Governmental Organisation, IUCN, in no small way due to the central role that IUCN played in the development and negotiation of the Ramsar Convention. In addition, the global environmental law agenda was at that time in its very early stages, - a year before the convening of the first UN Conference on the Human Environment and the establishment of the UN Environment Programme, and the pattern for hosting MEA Secretariats had not yet been established.

SECTION 1- LEGAL POSITION

72. Some of the legal difficulties that the Ramsar Secretariat has experienced are related to international personality and others to domestic personality.
73. The MEAs negotiated after 1970 created Secretariats that do not have full and independent international legal personality of their own. However, each MEA is an international institution. Each has some attributes of international personality, as afforded it by its Contracting States. For example, while they lack sufficient capability to conclude formal treaties, they can conclude Memoranda of Understanding (See: Annex1). This is true for all MEA Secretariats, including the Ramsar Secretariat. It, like the other MEA Secretariats, has some inherent international legal personality by reason of its COP being an assembly of sovereign States constituted by intergovernmental agreement that have international legal personality and may collectively exercise it on behalf of the Ramsar Secretariat as they deem fit. It must be recognized that this legal right is without prejudice to arrangements that may be in place between the secretariat and the other MEA institutions such as the COP or Standing Committee or between the secretariat and the host organisation with regard to supervision of the activities of the Secretariat.
74. MEA Secretariats located within IGOs have the additional legal advantages of their host IGOs enjoying broader international legal personality that can be engaged for the purpose of concluding treaties on their behalf (e.g. host country agreements) and

their staff being located within IGOs may enjoy the *laissez passer* and other institutional benefits of the UN system, such as logistical and security support. In contrast, the Ramsar Secretariat does not, because the IUCN, being a non-governmental organisation, has neither substantive international legal personality nor membership in the system.

75. In relation to its domestic legal personality, IUCN enjoys a special legal relationship with Switzerland, under the host country agreement between them which gives the IUCN in some respect an equivalent status as it is enjoyed by international organisations with its headquarters there. Therefore, its staff benefit from some of the privileges accorded to IGOs, such as tax exempt status. Those privileges accorded to the IUCN also apply to the Ramsar Secretariat, its premises and staff. Under the various delegations by IUCN to the Ramsar Secretariat of IUCN's powers flowing from its domestic legal personality as an association under Swiss law, it would appear that the Ramsar Secretariat has gradually acquired some at least, of the attributes of domestic legal personality under Swiss law (e.g. power to conclude Swiss contracts, etc.)
76. Having regard to the above, the following recommendations are made for actions that the Ramsar Secretariat may take to address some of the challenges that that it faces.

International cooperation agreements

77. Since the Ramsar Secretariat, like other MEA Secretariats, has not been granted full international legal personality by its Contracting Parties, it would be prudent for the Secretariat to conclude MOUs with governments rather than formal treaties or "binding agreements" with States (e.g. host country arrangements for convening meetings of Ramsar COPs). Similarly, it is appropriate to conclude MOUs with the UN, its agencies or other MEA Secretariats.

Travel visas for Ramsar Secretariat staff

78. The Swiss Government has informed the Ramsar Secretariat that, in November 2008, Switzerland will formally enter the Schengen Area. By then, the "Permits B or C" of non-Swiss staff will allow them to travel (as a tourist, up to 90 days) inside the entire Schengen Area without the need of a specific visa, providing a partial solution to the difficulties in obtaining travel visas for Ramsar Secretariat staff for the Schengen cities.
79. Beyond the Schengen area, it remains the responsibility of Contracting Parties to the Ramsar Convention to facilitate travel to or through their countries for Ramsar Secretariat staff. This duty could be reinforced in a COP resolution that calls upon all Contracting Parties to facilitate the delivery of visas to Ramsar Secretariat staff travelling on official business.

Recognition of Ramsar Convention delegations' credentials

80. The COP may wish to consider adopting a Resolution calling upon States and IGOs to accord to the Ramsar Secretariat the same status at international meetings as is accorded to Secretariats of other MEAs. While that Resolution would not be binding on non-parties, it would be an expression of the will of the Contracting Parties that is not likely to be disregarded by those of other MEAs, the UN Secretariat and other IGOs, in which some or all of the Ramsar Contracting Parties participate.
81. A decision could also be considered by COP requesting the Contracting Parties and other IGOs to recognise the credentials of delegations from the Ramsar Secretariat on the same legal basis as Secretariats from other MEAs. Such resolution could also urge the Ramsar Secretary-General to intensify the action that may be taken with relevant organisations, including the United Nations system, to secure for the Secretariat the same status as is accorded by them to the Secretariats of other MEAs. This would also facilitate the prompt granting of visas, although not all the efficacy in mobility of a United Nations Laissez Passer.

Work permits for spouses of non-Swiss staff members

82. The Swiss authorities have informed the Secretariat that, in principle, spouses should normally be able to obtain work permits without major problems, as Switzerland has a policy of facilitating the access of spouses to the labour market (as long as they fulfil the requirements of existing job positions, they can work in their respective professions if they are offered a contract) and that the employer (i.e. the Ramsar Secretary-General) needs to actively support permit requests from spouses of staff. To this end, he should contact the Swiss Mission in Geneva so that that they can facilitate the process. They have also been informed that children normally receive the same permits as their parents.

Making binding contracts on behalf of the Ramsar Secretariat

83. The delegation of authority from the IUCN Director-General to the Ramsar Secretary-General, signed on 29 January 1993, expressly delegates the authority to enter into contracts (paragraph I (B)). It reads as follows:

Delegation The authority of the Director General of IUCN to receive and expend Convention funds, including payment of Bureau staff salaries and benefits; purchase and rental of supplies, materials, and equipment; *authority to enter into contracts*; and otherwise provide for the financial administration of the Convention's funds by means of a separate Ramsar account is hereby delegated to the Secretary-General. The Secretary-General, with the approval of the Standing Committee, may purchase services from IUCN to assist with financial administration.

Legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)

84. This matter is dealt with in the Service Agreements that are entered into between the IUCN Director-General and the Standing Committee of the Ramsar Convention. The relevant paragraph of the draft agreement currently under negotiation reads as follows:

LIABILITY AND INDEMNIFICATION

The Parties shall ensure, with the assistance of IUCN's insurance broker, that there is sufficient insurance coverage to protect against any risk related to any acts and omissions by Ramsar staff. To the extent that such insurance coverage is unavailable or inapplicable, and consistent with the provisions in para. xxx of the Delegation of Authority from the DG to the SG (which was signed by IUCN and Ramsar on dd/mm/yyyy), Ramsar, shall indemnify and hold IUCN harmless for and against all damages, claims, losses and expenses (including legal fees) that IUCN may sustain or incur in connection with its performance of this agreement. It is understood that IUCN's liability to Ramsar shall be limited solely to damages caused by IUCN's negligence or wilful misconduct in the performance of the services hereunder."

85. The above reference is to the "Delegation of Authority from the Director General, IUCN to the Secretary-General of the Ramsar Convention Supplementary Note", dated 29 January 1993, which states as follows:

Legal and Financial Liability: IUCN, as the legal persona to which the Ramsar Bureau is attached, must inevitably retain ultimate liability for the actions of the Secretary-General, in exercising the authority delegated to him. It is agreed that in his own interests, and in order to minimise any risk to IUCN, the Secretary-General will:

- a. ensure that adequate and up-to-date accounts are kept by the Bureau, so as to disclose any excesses of expenditure over income promptly, and before they become difficult to correct. The internal accounting procedures used will be agreed between the Secretary General and the Director of Finance of IUCN, and statements of the financial position of the Bureau will be made to the Standing Committee twice yearly, at mid- and end-year, and copied to the Director General of IUCN;
- b. give early warning to IUCN of the likely termination of any contracts, including contracts of staff employment, which could lead to financial or legal liability;
- c. ensure that potential risks of financial or legal liability are, to the maximum extent practicable, covered by insurance, and that the Director General of IUCN is informed of the nature and extent of such cover. In particular, the Secretary-General will ensure that all Bureau staff are insured against claims for alleged professional negligence.

86. Accordingly, the Ramsar Secretariat is responsible for ensuring that adequate insurance coverage is taken to cover such eventualities.

Difficulty in paying contributions to Ramsar Secretariat

87. As has been pointed out in Part 2 of this Report, the Ramsar Secretariat is not without a certain degree of domestic legal personality. However, the question whether this is sufficient to enable the Secretariat to open a bank account in its name under Swiss Law is a matter that needs to be clarified with the Swiss authorities. However, it must be recognised that the financial rules and regulations of IUCN will continue to apply to the Secretariat as an integral part of the relationship that it has with the IUCN under Article 8 of the Ramsar Convention.

Non-Swiss employees may be losing privileges of being taxpayers in their communes

88. The Swiss authorities have stated that non-Swiss employees of IUCN and Ramsar are exempt from taxes on income. IUCN and the Ramsar Secretariat retain at source an equivalent amount of income from non-Swiss staff, which ensures an equal salary with the Swiss staff members who are not tax-exempt. However this is done by IUCN / Ramsar Secretariat on grounds of equal treatment of non-Swiss and Swiss staff and not by a requirement of the Swiss authorities. Thus, non-Swiss staff members are not considered taxpayers in their communes.
89. There seems to be no solution to change this situation unless IUCN were to renounce its agreement with Switzerland that exempts it from paying taxes (which is unlikely). (When negotiating with Switzerland, the ICRC did opt for a tax-paying situation. UN employees are in the same situation as IUCN employees are, but at the UN, Swiss staff members are also tax-exempt.) An agreement whereby IUCN staff would pay taxes and Switzerland would return the equivalent amount to Ramsar/IUCN is understood not to be possible, as there is no legal basis for this kind of agreement in the Swiss law.
90. However, it seems that the only privilege foregone by non-Swiss staff so far identified is access for small children to communal crèches. As an answer to this situation, the UN has most probably established its own crèches. IUCN looked into this possibility, but considered it too expensive.

IUCN controls on financial procedures in ways that may not be suitable

91. The manner in which the IUCN financial rules and regulations are administered in respect of the Ramsar Secretariat finances is a matter that should be discussed and negotiated between the two parties within the framework of the negotiation of the service contracts between them and agreement reached on a mutually satisfactory arrangement for the management of the IUCN funds. This matter could also be included if the COP agrees, in a Resolution that may be placed before the COP for adoption.

Lack of staff access when in the field to UN logistical and security assistance

92. Provision of logistical and security assistance to the staff of the Ramsar Secretariat when they travel to member countries is the responsibility of the member governments. Accordingly, it is suggested that this matter too be alluded to in an appropriate decision of the COP.

SECTION 2 – RECOMMENDATIONS

Standing Committee and the Conference of Parties

93. There appears to be an urgent need to clarify and confirm the legal personality of the Secretariat by, for instance:
- a. Confirming IUCN as the organisation that provides the institutional underpinning for the Ramsar Convention, as provided by Article 8 of the Secretariat;
 - b. Expressing appreciation of the key role played by IUCN in the negotiation and conclusion of the Ramsar Convention and the continuing support that Ramsar Convention institutions have received to date;
 - c. Highlighting the significantly changed circumstances both in terms of the increased membership from countries throughout the world and an expanded conservation programme, which has necessitated increased flexibility for the Ramsar Secretary-General in the implementation of the Convention's programme;
 - d. Calling on the Director General of IUCN to enter into negotiations with the Secretary-General of the Ramsar Secretariat to formalise a new arrangement of cooperation more appropriate to current and future requirements;
 - e. Authorising the Standing Committee in consultation with the Secretary-General to negotiate a complementary host country MOU with the Swiss Government to cover matters of special interest to the Secretariat;
 - f. Requesting all Contracting Parties to provide the Secretariat staff with the necessary visas for official travel and to provide security and logistical support at a level no less than what is provided to the staff of other MEA Secretariats;
 - g. Calling on the Executive Director of the United Nations Environment Programme to strengthen UNEP's cooperation with the Ramsar Secretariat in regard to its activities relating to Environmental Governance, in particular, strengthening the synergies and interlinkages among MEAs and related technology support and capacity building;

SECTION 3 - COSTS AND BENEFITS OF OPTION 1

94. This option does not entail significant additional financial costs, except the costs of intensified Secretariat activities arising from a programme of increased cooperation with Governments and other IGOs including the United Nations, its specialised agencies and bodies, in particular, UNEP and the Secretariats of other MEAs. The benefit of taking action as recommended above is the clarification of roles and responsibilities and the formalisation of administrative arrangements and delegations of authority that will:
- a. Enable the Ramsar Secretariat to function more effectively in the discharge of the functions entrusted to it by the convention and further elaborated by the decisions of the Conferences of Parties and the Standing Committee.
 - b. Enable the Ramsar Convention to be accorded the same status as the Secretariats of other MEAs in regard to matters relating to the realisation of the aims and objectives of the Convention thus enhancing its standing as a equal member of the global network of MEAs dealing with the conservation of natural resources.
 - c. Enable the Ramsar Secretariat to collaborate closely and effectively with the Governments, the United Nations and its agencies and bodies as well as other MEA institutions in the implementation of the Ramsar Convention.
 - d. Strengthen mutual trust and cooperation with the host institutions IUCN on basis of well defined powers, duties, rights and responsibilities of the two organisations.

PART 4 - OPTION 2 OBTAINING RECOGNITION BY SWITZERLAND OF THE RAMSAR SECRETARIAT AS AN INTERNATIONAL ORGANISATION SEATED IN SWITZERLAND

SECTION 1- LEGAL POSITION

95. In an authoritative analysis of the legal status of institutions such as Conferences of Parties, Subsidiary Bodies and Secretariats set up under all the Multilateral Environmental Agreements concluded since 1972, Churchill and Ulfstein state “As far as we are aware, no global MEA has been concluded since 1972 that establishes a new IGO for its institutional machinery”. An independent IGO for an MEA is very unusual. Examples tend to be chronologically centred in the middle of the 20th century, during a time when nations were engaged in creating a new international architecture and corresponding institution building. They include mostly marine resources management institutions, such as the 1946 International Whaling Commission that serves as Secretariat for the Parties to the International Convention for the Regulation of Whaling and international fisheries commissions. A major exception is the Secretariat established in Buenos Aires in 2003 for the Antarctic

Treaty System. Another interesting exception is the South Pacific Regional Environment Programme (SPREP), which was initially hosted as a unit of the South Pacific Commission in New Caledonia, then as a program based in Samoa under the Regional Seas Programme of the UNEP, before ultimately becoming an independent IGO, currently still based in Samoa. It is possible that some states may not recognise even these institutions as international intergovernmental organisations.

96. To establish the Secretariat of the Ramsar Convention as an international organisation would require the amendment of the Ramsar Convention to make the intention of the parties clear and unambiguous regarding the creation of an international organisation with the requisite international legal personality.
97. As explained in Part 2, in such circumstances, the Secretariat would be invested with fuller international legal personality that would enable it to engage in treaty making, have diplomatic immunity before national tribunals, and have legal standing before international legal tribunals.

SECTION 2 - COSTS AND BENEFITS OF SUCH TRANSFORMATION

98. The Swiss authorities have informed that a new federal law (192.12), which entered into force on 1 January 2008, allows Switzerland to register the Ramsar Secretariat as an International Organisation or IGO through the conclusion of a “host agreement” (accord de siège) and that this option also provides diplomatic privileges, immunities. This could pave the way for addressing some of the international personality deficits faced by the Secretariat, such as in obtaining visas, raising the Secretariat’s profile and being registered as an IGO at UN and other meetings, and also strengthen the domestic legal personality attributes of the Secretariat with capacities to enter into contracts and be held fully responsible and legally liable for all administrative, financial and human resource matters.
99. This option comes with serious financial and legal consequences and responsibilities, which is probably the reason why none of the Conventions adopted since 1972 have thought it appropriate to create a Secretariat as an independent international organisation.
100. If this option is adopted, the Secretariat would no longer be tied to the financial, operational and personnel rules and regulations of IUCN and would have to establish its own rules and regulations to regulate these matters. In addition, the Swiss authorities have informed that if this option is adopted, the Secretariat would need to establish the following cumbersome administrative systems independently:
 - i) Social security scheme (equivalent AVS/1er pilier) and pension scheme (2e pilier), which has to be submitted to the relevant Swiss Authority for validation.

- ii) Staff insurances
- iii) Jurisdictional arrangement similar to the administrative court of the UN or the ILO, as Swiss tribunals would no longer be competent for the Ramsar Secretariat as an independent international organisation; this will also require a validation by the Swiss relevant authority.
- iv) Obtain a tax exemption for all staff members, including Swiss citizens. The Secretariat would have to establish an internal system similar to the IUCN system to retain an equivalent tax from the salary of all staff members.

SECTION 3 – RECOMMENDATION

101. Since many of the challenges that the Secretariat faces could be resolved more cost effectively by clarifying and confirming the respective roles of the Secretariat and its host organisation, IUCN, through appropriate Standing Committee and COP decisions, it is self evident that this option is one of last resort, and should not be considered until all other possibilities have been exhausted. It must be recognised that it is for very good reason that states when concluding numerous multilateral environmental agreements since 1972 have not created a Secretariat as an independent international organisation. There is no compelling reason to advance for governments to change this sound legal position in regard to the Ramsar Convention.

PART 5 OPTION 3

JOINING THE UNITED NATIONS SYSTEM IN SOME WAY

SECTION 1 - LEGAL POSITION

102. There is only one appropriate IGO within the UN system that the Ramsar Secretariat might be joined with, i.e. the United Nations Environment Programme (UNEP). This observation is made in light of the congruent subject matter and expertise of UNEP and the Ramsar Secretariat. As explained in Part 2 of this Report, the legal authorities for UNEP to establish Secretariats for other MEAs were derived from the texts of the respective Conventions and/or from the related implementing decisions of the relevant COPs. Thus, Secretariats were established within UNEP for the Basel Convention, CBD, CITES, CMS, Rotterdam Convention and Stockholm Convention. Special circumstances relating to the negotiation of the UNFCCC and the UNCCD lie behind the provision of their secretariats by the United Nations. There does not appear to a compelling reason for the Ramsar Convention to seek such arrangement.

103. As the provider of the Secretariats to MEAs, the primary role of UNEP is to ensure that they receive the administrative support which they need to function effectively. In 2003, the UN Office of Internal Oversight Services (UNOIOS) defined administrative services to include budget and financial management, human

resources management, ICT, contracts and procurement, safety and security, building and facilities management, oversight-audit, legal services, monitoring and evaluation, etc.

104. As explained more fully in Part 2 and the Annex to the Report, although the Executive-Director has the ultimate responsibility and accountability for the provision and delivery of financial, budgetary, personnel and administrative support to the multilateral environmental agreement Secretariats, the Secretariats also report directly and are accountable to their respective governing bodies, particularly on programmatic issues. There is a need to be mindful of the fact that the governing bodies provide the policy direction for the multilateral environmental agreements and determine their budgets.
105. Secretariats that have been established by the Executive-Director of UNEP consist of staff holding UNEP contracts and their executive heads report and are accountable to the Executive-Director for all financial, budgetary, personnel and administrative matters, while they remain accountable to their respective governing bodies with regard to substantive matters. With regard to the appointment of the head of the Secretariat, there is usually a requirement to do so in close consultation with the COP or its designated body, such as a Standing Committee or Bureau. The COP and its subsidiary bodies direct the substantive functions of the Secretariat in so far as they pertain to the implementation of the MEA and have exclusive authority to direct the Secretariat in regard to these matters as well as related procedural issues. A detailed discussion on the legal personality of these Secretariats and their legal relationship with UNEP is set out in Part 2 Section 2.1 of this report. The relevant provisions in the texts of the conventions are at Annex 2.
106. Following a comprehensive review of the evolution of institutional practices relating to the relations between MEA Secretariats and UNEP, the Executive-Director of UNEP earlier this year (2008) established a regular consultative process between UNEP and the executive heads of the MEAs administered by UNEP, through the mechanism of a MEA Management Team (MMT) comprising himself and his senior representatives and the executive heads of the MEAs. It has provided a much needed forum for addressing issues relating to the roles and responsibilities of UNEP and the MEAs in regard to the discharge of their respective functions.
107. In this connection it may be recalled that the CITES Secretariat, in 2006, initiated a proposal to obtain COP approval for it to be recognized as a convention body with “independent” legal personality. Its motivation was that it had experienced difficulties in entering into legal arrangements, such as signing MOUs, host agreements, etc with partners. This matter was extensively discussed at the 54th session of Standing Committee of CITES and it was decided not to proceed with this proposal because it was considered in contravention of the Convention, in particular, Article XII (which states that a Secretariat shall be provided by the Executive-Director of the United Nations Environment Programme).

SECTION 2 - CONSEQUENCES OF JOINING UNEP AS A UNEP-ADMINISTERED MEA

108. The following legal consequences would flow from the adoption of Option 3, ie. Hosting of the Ramsar Secretariat by UNEP as part of the UN system:

- a. The executive head of the Secretariat would be appointed by the Executive-Director of UNEP in consultation with the COP through its Bureau and accountable to and report directly to him/her on all matters relating to Secretariat functions and on all other matters to the extent that they relate to the any aspect of the administrative functioning of the Secretariat.
- b. The Executive-Director of UNEP would be responsible for and accountable to the Ramsar COP for all administrative matters as defined by the United Nations Office of Internal Oversight Services.
- c. United Nations rules, regulations and procedures would apply to all matters which fall within the definition of administrative services.
- d. For administrative efficiency, the Executive-Director could delegate any of his/her functions to the executive head of the Ramsar Secretariat. It should however, be clearly understood that the ultimate responsibility for the effective functioning of the Secretariat rests with the Executive-Director of UNEP.

SECTION 3 - PROCEDURE FOR BECOMING A UNEP-ADMINISTERED MEA

109. Article 8(1) of the Ramsar Convention sets out the procedure to be followed in regard to this matter:

The International Union for Conservation of Nature and Natural Resources shall perform the continuing bureau duties under this Convention until such time as another organization or government is appointed by a majority of two-thirds of all Contracting Parties.

Accordingly, the COP, by a decision of two-thirds of all Contracting Parties, could request the Executive-Director of UNEP to provide a Secretariat to or carry out Secretariat functions for the Ramsar Convention.

110. Since such a request by the COP for UNEP to host the Ramsar Secretariat would carry with its significant financial implications, the Executive-Director would bring the request to the attention of the Governing Council of UNEP and seek its approval to provide the requested secretarial services and to undertake consequential actions such as the creation and management of trust funds, appointment of the executive head of the Secretariat and its staff as UNEP staff and the application of all relevant United Nations rules and regulations relating to financial and personnel management and administration.

111. Variations exist between MEAs regarding the manner in which roles and responsibilities relating to the division of functions across UNEP and the respective Secretariats have been arranged. For example, the CBD and CITES have formal negotiated, written and signed administrative arrangements with the UNEP Executive-Director, whereas the Secretariats of the CMS, Basel Convention and Montreal Protocol have no such written agreements. The Rotterdam Convention and the Stockholm Convention each have a written delegation of authority from the Deputy Executive-Director and the Executive-Director, contained in a single document, whereas delegations of authority for other conventions are to be found in a number of documents or implied from historical practice. One of these approaches or a variant upon them would be needed for the Ramsar Secretariat.

SECTION 4 - COSTS AND BENEFITS OF JOINING UN/UNEP

112. If a UNEP Governing Council decision were to authorise the Executive-Director of UNEP to provide secretariat services to the Ramsar convention, a Trust Fund(s) would be established at UNEP to hold all funds received by the Ramsar Secretariat from all sources, including contributions from parties, donor funds and funds received from financial institutions such as the Global Environment Facility. These funds would be managed by Executive-Director of UNEP in accordance to UN rules and regulations and disbursed in accordance with agreed procedures. A General Assembly approved Programme Support Cost of 13% would be charged to the Trust Fund(s) to meet the administrative expenses that UNEP incurs in the management of these funds and the provision of secretarial services. There may also be other charges that UNEP would levy for specific services rendered to the Ramsar Secretariat.

113. Ramsar Secretariat staff would be recruited by the UNEP Executive-Director and existing staff would become UN staff, subject to the UN staff rules and regulations. They would be entitled to the UN privileges and immunities and to pension, medical insurance etc. in accordance with the United Nations Pension Regulations and other UN rules and regulations respectively.

114. Being a UNEP administered Secretariat would facilitate closer cooperation with UNEP in its work programme, in particular, activities relating to global environmental governance, including synergies and interlinkages among MEAs, scientific assessment and early warning, technical support and capacity building, environmental law and institutions and implementation of MEAs.

115. It is self evident that the Secretariat would no longer be confronted with most of the challenges listed in Part 1 of this report related to its status, should it decide to become a Secretariat provided by UNEP, as it would have equal status of an UN supported MEA and enjoy all the privileges and immunities of the United Nations. However, it must be clearly recognised that in such event, the Executive Director of

UNEP would be responsible for financial, budgetary, personnel and administrative management of the secretariat and accountable to the Conference of Parties of the Ramsar Convention in regard to these matters.

PART 6 – RECOMMENDATIONS

116. As stated in the Manual of the Ramsar Convention, “the official name of the treaty, *The Convention on Wetlands of International Importance especially as Waterfowl Habitat*, reflects the original emphasis upon the conservation and wise use of wetlands primarily as habitat for waterbirds. Over the years, however, the Convention has broadened its scope of implementation to cover **all aspects** of wetland conservation and wise use, recognising wetlands as ecosystems that are extremely important for biodiversity conservation and for the well-being of human communities, thus fulfilling the full scope of the Convention text. For this reason, the increasingly common use of the short form of the treaty’s title, the “Convention on Wetlands”, is entirely appropriate.”
117. It is plainly evident that the Ramsar Convention is the only MEA that remains outside the United Nations network of multilateral environmental agreements. This of course, is due almost entirely to the historical fact that preparations for the negotiation of the convention were admirably led by the IUCN in the late sixties and early seventies and that the negotiations for the convention were conducted under its aegis. Consequently, IUCN was named in the text of the convention as the institution to “perform bureau duties”.
118. It is equally evident that the development of the Convention over the thirty seven years since it was concluded including increased membership from countries throughout the world, and an expanded conservation programme, as well as the creation of a wide network of multilateral environmental agreements and global and regional programmes on sustainable development, ecosystems and conservation of natural resources have created a completely new legal and institutional environment in which the Secretariat has to function if it is to be effective.
119. As pointed out in Part 2 of this report, as early as 1980, at its first ever meeting, the Conference of Parties to the Ramsar Convention initiated action to request the Executive Director of UNEP to consider providing secretarial services to the convention. Perhaps, the prevailing financial and other circumstances of the time may not have been conducive to such a development. However, today UNEP is the seat of the Secretariats of some of the most important global and regional MEAs, and is at the vanguard of promoting their further development and effective implementation through structured and systematic global environmental governance including the effective use of synergies and interlinkages among them, technology support and capacity building. It is imperative that the Ramsar Convention is recognised as an equal partner in this global endeavour and plays a central role in the area of conservation and sustainable use of natural resources, alongside other global and regional MEAs as well as UNEP and other institutions dealing with this

area of environment and development. Becoming a UNEP-administered Secretariat will no doubt provide the Convention with the capacity to realise this overarching objective.

120. Having regard to the legal analysis of the issues relating to the legal status of the Ramsar Secretariat and the examination of the substantive and procedural aspects of the three options considered by the Standing Committee for addressing the challenges faced by the Ramsar Secretariat in effectively discharging its functions in the context of its current vastly expanded mandate and programme of work, the Standing Committee at its 38th meeting, may wish to consider presenting an appropriate Resolution for adoption at the 10th session of the Conference of Parties on Secretariat Matters incorporating as appropriate, some of the issues raised in this report.

ANNEX 1

LAW RELATING TO LEGAL STATUS OF THE SECRETARIATS OF MEA'S

International law and international legal status

1. In the classic text *Bowett's Law of International Institutions*, the authors state that

International organisations are legal persons whose activities are governed by law, including obligations under a general rules of international law, under their constitutions, and under international agreements.^f

2. International legal personality can enable a state or intergovernmental organisation to engage in treaty making, have diplomatic immunity before national tribunals, and to have legal standing before international legal tribunals. However, legal personality has no predetermined and fixed range of these qualities in international law.^g International legal personality is vested in an intergovernmental organisation to the extent delegated by other international legal personalities. Therefore, to create an organisation with international legal personality, States need to agree through a constitutive instrument, whether a convention or assembly resolution. The precise content of an international organisation's international legal personality varies according to the powers that have been expressly granted to it by the agreement of States and the functions that can reasonably be implied because they are considered necessary in order for it to serve its purpose.^h

3. The attribution of international legal personality to an intergovernmental organisation (IGO) establishes its objective status in international law, irrespective of any lack of a specific act or recognition of that IGO by a third State not party to the instrument creating the IGO. Accordingly, in the *Reparations Case*, the International Court of Justice stated in 1951 that:

[F]ifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality and not merely personality recognised by them alone, together with the capacity to bring international claims.ⁱ

^f Philippe Sands and Pier Klein, *Bowett's Law of International Institutions* 5th edn, Sweet and Maxwell 2001 (Bowett) p. 441; Citing ICJ Advisory Opinion on Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt (1980) ICJ Rep. 73, 89-90.

^g Bowett p. 473.

^h Bowett p. 473.

ⁱ Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 ICJ. Rep. 174.(Reparations Case) at 178-185.

4. A global multilateral environment agreement (MEA) that is negotiated pursuant to a decision of the United Nations General Assembly (or the assembly of a Specialised Agency) and consequently adopted under the auspices of the United Nations (or a Specialised Agency) comprises a United Nations multilateral agreement. However, the institutional arrangements created by a United Nations treaty do not necessarily embody a United Nations specialised agency or even a subsidiary organisation.
 5. Nor do the institutions established under the one international agreement need to share the same legal status. The institutions created are typically a Conference of Parties (COP) or Meeting of Parties, Subsidiary Bodies (such as some sort of Bureau or Standing Committee and subsidiary bodies for scientific and technical advice, financial assistance and compliance monitoring), and a Secretariat. Although the COP might have international legal personality, the subsidiary bodies and Secretariat, might not.
 6. Most treaties that specifically constitute IGOs specify the capacity of the IGO as a legal person under national law.^j It is not the norm in international treaty practice to specify the international legal personality and powers of subordinate IGO institutions, individually. The personality and powers of IGO institutions will depend upon the grant of such personality in the constitutive treaty, their implication from the functions that the institution is established to discharge and what roles are granted through the internal law of the international organisation.
 7. When MEA texts do specify international legal personality and powers, they allow considerable room for interpretation and evolution. A recent example is the SPREP Agreement.^k Article 8 provides that:
 1. SPREP *shall have such legal personality* as is necessary for it to carry out its functions and responsibilities and, in particular it shall have the capacity to contract, to acquire and dispose of movable and immovable property and to sue and be sued. [*emphasis added*]
 2. SPREP its officers and employees together with representatives of the SPREP meeting shall enjoy such privileges and immunities necessary for the fulfilment of their functions, as may be agreed that the new twin spread and the party in whose territory the Secretariats is located, and as may be provided by other parties.
- As can be seen, the SPREP Agreement does not explicitly distinguish between international legal personality (e.g. privileges and immunities) and domestic legal personality (e.g. capacity to sue and be sued).
8. In 1949, the *Reparations Case* provided a stimulant for the development of the legal personality of international organisations over the subsequent 50 years by looking beyond the constituent instrument of an IGO to imply from the circumstances of its

^j Bowett p. 477.

^k Agreement Establishing the South Pacific Regional Environment Programme 1993.

operations the powers necessary for its Secretariat to carry out its functions.¹ This position was more recently endorsed by the International Court of Justice in its advice on the legality of the use of nuclear weapons:

[T]he necessities of international life may point to the need for organisations, in order to achieve their objectives, to possess subsidiary powers which are not expressly provided for in the basic instruments which govern their activities. It is generally accepted that international organisations can exercise such powers, known as implied powers.^m

9. Thus, the powers of an IGO Secretariat flow not only from its constitutive instrument but are also derived from the implied powers necessary for the functioning of an international institution. The 1986 *Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations* codifies some of these powers. Although that Convention has not entered into force in over two decades, it may still be taken to articulate some of the powers necessary for the functioning of an international institution. More important, however, are the object and purpose of the MEA, that determine the functions appropriate for its Secretariat, and the operating environment within which it functions, that determines what arrangements and measures are necessary for the Secretariat to discharge those functions.
10. A treaty is ‘an international agreement concluded between states in written form and governed by international law’.ⁿ Treaty making by an international organisation presupposes that aspect of international personality which enables two or more States to negotiate and form a common intention to be bound. Treaties might be agreed to establish a formal relationship between an international organisation and its host State, mutual obligations for the grant of development funding, cooperation in project management, etc. The terms on which the international organisation can enter into a treaty will be determined by the organisation’s constitutive treaty, as well as its internal procedures, as established by the relevant resolutions, decisions and established internal practice of the organisation, which might require the explicit approval of the COP or a subsidiary body delegated with the power to grant such approvals.^o
11. It is uncertain whether IGOs, other than the United Nations, have a right to immunity under customary international law.^p The constitutive instrument of an IGO will normally specify that it has the ‘privileges and immunities necessary to discharge its functions’. This phrasing leaves a great deal to be determined through the interpretation of the IGO and the host State before a judicial tribunal. Therefore,

¹ G D Triggs *International Law Contemporary Principles and Practices* Lexis Nexis Butterworths 2006, 179.

^m Legality of the Use by a State of Nuclear Weapons in Armed Conflict 1996 ICJ Rep. 66, 79 para. 25.

ⁿ As defined in the Vienna Convention on the Law of Treaties 1969, Art. 2.

^o Bowett p. 445.

^p Bowett p. 489.

appropriate privileges and immunities are usually elaborated through an agreement with the host country government, by treaty or by less formal methods such as a memorandum of understanding. To give effect to privileges and immunities under national law, host countries need to implement those privileges and immunities, often by passing domestic legislation.^q

National law and domestic legal status

12. Legal persons under the laws operational in the host country are subject to the general legal standards applicable to such bodies in that country as qualified by special arrangements.^r Legal personality in the host country generates a corporate body that can enter into contracts, own property, carry liability and have standing before national courts.^s It does not enable the MEA Secretariat to engage in treaty making or give it standing before an international legal tribunal.
13. In general, contractual relations between an MEA Secretariat and other bodies can be governed by the national law of the host country or by another national law agreed to by the parties to the contract. Contracts agreed to by a Secretariat based in Geneva are likely to be governed by Swiss law.^t
14. In general, IGOs are responsible for their non-contractual liabilities, such as for damage caused by negligence. The liability usually arises under the law of the jurisdiction in which the damage occurred.^u Nevertheless, it is possible to argue the necessity of setting aside of national law in circumstances where it conflicts with the international legal obligations of the IGO in performance of its functions.^v For example, a national law prohibiting the disclosure of information contained in Government Department files, other than with the written permission of the Head of Department, could conflict with the performance of an IGO's functions to report and disseminate information on national government treaty compliance.
15. A hosting agreement between the MEA COP Secretariat and the government of the host country might establish special terms which the host country will meet to satisfy the needs of the MEA Secretariat. It can determine what tax, diplomatic immunity, staffing and financial management standards are to be applicable to the Secretariat. For example, an MEA Secretariat might seek to apply staffing and financial management standards applicable within the United Nations Secretariat rather than those normally applicable within the host country.
16. The national government of the host country can agree to hosting arrangements under a treaty if the MEA institution has international legal personality. More usually, the

^q Bowett p. 489.

^r Bowett p. 46..

^s Bowett p. 461.

^t Bowett p. 462.

^u Bowett p. 465.

^v Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights ICJ Advisory Opinion, April 29, 1999 (Cumaraswami Case).

agreement will take the form of a Memorandum of Understanding (MOU), which does not create formal international legal obligations, or even less formal consultations that result in the host country adjusting its domestic law accordingly.

17. When an MEA Secretariat is located in a country different from that of its host IGO, specific country hosting arrangements will need to involve the host IGO for the out-posted MEA Secretariat. Churchill and Ulfstein argue that arrangements between host countries and MEA institutions can be binding legal agreements adopted directly as a manifestation of international legal personality. The two examples given in their study are the hosting agreement between Canada and the Meeting of Parties of the Montreal Protocol and the hosting agreement between Germany, the United Nations Secretariat and the Climate Change Secretariat.^w It should be noted that the Montreal Protocol example engages its Meeting of Parties (a convening of States) directly, rather than the Secretariat, and that the Climate Change Secretariat is an integral part of the United Nations Secretariat, which has established international personality. These cases do not demonstrate international legal personality in the cases of MEA Secretariats generally.
18. There need not be a formal treaty between the host IGO and the host country to agree on the legal personality and rights that an MEA Secretariat is to have under domestic law. Depending upon the domestic law of the host country, a MOU would suffice, as would informal understandings embodied in parallel decisions taken by the national government and hosting IGO. These seem to be simpler ways to agree upon the relationship between the MEA Secretariat and the host country because ambiguities remain as to the international legal personality of MEA Secretariats, as discussed above.
19. Pursuant to an arrangement with the national government of the host country, domestic legal personality could be attached to the Secretariat of an MEA by means including but not limited to:
 - incorporation under the domestic laws of the host country,
 - a specific legal act of recognition of status by the government or Parliament of the host country for the MEA Secretariat,
 - legislation setting standards applicable to the host IGO, or
 - application to the MEA Secretariat of legislation setting standards for IGOs in general. (Authority for this statement)

^w Agreement Regulating Matters Resulting from the Establishment in Canada of the Multilateral Fund and Its Organs, November 23, 1998; Agreement concerning the Headquarters of the Convention Secretariat, UN-SIG-Secretariat of UN Framework Convention on Climate Change, June 20, 1996; cited in Churchill and Ulfstein p. 651.

Practice of multilateral environmental agreements

Conferences of Parties

20. Although MEAs do not expressly state that the institutions they create have international legal personality or the powers that flow from them, such as to enter into treaties, they do usually require the COP to exercise 'functions necessary for the achievement of the objectives'. A broad interpretation of those functions could include the negotiation of treaties with the other international organisations.
21. Churchill and Ulfstein consider that the autonomous institutional arrangements of MEAs create informal organisations that each do have sufficient international personality to engage in their own right in cooperative relations with other international bodies. This appears to be the correct view in relation to the powers of Conferences of Parties, which are bodies comprised of State representatives. (However, it does not follow that it is also correct for Secretariats.) We observe that international relations created by Conferences of Parties are informal and not binding in international law. In practice, it is rare for formal treaties to be entered into by MEA Conferences of Parties. Rather, cooperative relations with other international bodies have been pursued through Memoranda of Understanding.
22. An MOU is an informal agreement that evidences an intention not to enter into binding relations. The term MOU or, alternatively, Memorandum of Cooperation, in the title is indicative of a soft commitment rather than formal legal relations. Other indicators of the absence of an intention to bind legally are permissive rather than mandatory language, aspirational and imprecise obligations and the absence of clauses usual in a legally binding agreement, such as for its entry into effect, amendment, and termination.^x
23. For example, an MOU was entered into in 1996 between the COP of the Climate Change Convention and the Council of the Global Environment Facility.^y Churchill and Ulfstein note that this informal agreement was entered into despite prior advice from the UN Office of Legal Affairs that specifically recommended that a 'legally binding treaty instrument' be entered into. It considered that the Climate Change Convention COP had the power to enter into treaties.^z Nevertheless, the COP itself might have considered otherwise or declined to enter into a treaty for other reasons.

Secretariats

24. A multilateral environment agreement (MEA) may create Secretariat arrangements to assist in the achievement of its objectives. These can take three forms:

^x Anthony Aust, *The Theory and Practice of Informal International Instruments* 35 *International and Comparative Law Quarterly* 787 (1986). Nevertheless, it is possible for a memorandum to be legally binding if that clear intention is apparent on the face of the document.

^y Memorandum of Understanding between the Council of the Parties to the United Nations Framework Convention on Climate Change and the Council of the Global Environment Facility, Decision 12/CP.2, annex, UN Doc. FCCC/CP/1996/15/add.1 (1996).

^z UN Doc. A/Ac. 237/74, annex, para. 16 (1994) cited in Churchill and Ulfstein at p. 651.

- a) an independent IGO with full legal personality;
- b) no permanent institutional apparatus at all; and
- c) Secretariat hosting by an existing IGO.

- a) An independent IGO as Secretariat for an MEA is unusual. Examples tend to be chronologically centred in the middle of the 20th century, during a time when nations were engaged in creating a new international architecture and corresponding institution building. They include mostly marine resources management institutions, such as the 1946 International Whaling Commission that serves as Secretariat for the Parties to the International Convention for the Regulation of Whaling and international fisheries commissions. A major exception is the Secretariat established in Buenos Aires in 2003 for the Antarctic Treaty System. Another interesting exception is the SPREP, which was initially hosted as a unit of the South Pacific Commission in New Caledonia, then as a program based in Samoa under the Regional Seas Programme of the United Nations Environment Programme, before ultimately becoming an independent IGO, currently still based in Samoa. None of the multilateral environmental agreements concluded since 1970 have established independent IGOs. This matter will be demonstrated in Section 2.3 below.
- b) It is rarer for an MEA to have no Secretariat arrangements at all. The agreements comprising the Antarctic Treaty System established in 1959 formed the most salient example until a Secretariat was formed in Buenos Aires in 2003. Others included weakly formulated regional wildlife agreements in Africa and Latin America.
- c) The Secretariats for most contemporary MEAs are hosted by existing IGOs. Their status is most closely related to that of the Ramsar Secretariat. Despite location within a host IGO, MEA institutions retain a great deal of autonomy. Churchill and Ulfstein^{aa} have conducted an in-depth study of their legal status and they argue that MEAs have developed a virtually unique status, which they describe as “autonomous institutional arrangements”.

25. An MEA Secretariat may be authorised to enter into arrangements ‘necessary for the discharge of its functions’.^{bb} Churchill and Ulfstein note that text of any MEA ‘generally spells out the functions of the Secretariat’ but that the Secretariat is ‘usually an integral part of an existing IGO’.^{cc}

26. A survey of arrangements in relation to 15 global MEA Secretariats in the fields of conservation, atmosphere protection and waste management is set out in Part 2 of the Report. Table 1 shows the Secretariat arrangements specified in the text of the MEA, Table 2 shows the Secretariats for which arrangements were to be made by the MEA COP. All of these use the infrastructure of an existing IGO, rather than create a new

^{aa} Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law*, 94 AJIL 623 (2000).

^{bb} E.g.: Climate Change Convention, Art. 8(2) (f); Desertification Convention, Art. 23(2)(e); Vienna Ozone Convention, Art. 7(1)(e); and Basel Convention Art. 15(5)d.

^{cc} *Ibid* p. 627

IGO to serve the functions of a Secretariat, with the exception of the Ramsar Convention which uses the infrastructure of IUCN, a non-governmental organisation as its Secretariat.

27. In practice, States negotiating MEAs and MEA Conferences of Parties have not expressly vested international legal personality in their respective MEA Secretariats. In the case of the Climate Change Secretariat, the COP itself has queried 'whether the functions that have to be carried out by the Secretariat necessitate that it be given juridical personality on the international plane'.^{dd} Thus, rather than enter into formal treaties, MEA Secretariats have entered into MOUs with multilateral funding institutions and with each other.
28. If an MEA Secretariat lacks international legal personality in its own right, treaty making powers need to be exercised by the host IGO, if it has such powers. For example, an MEA Secretariat that is an operational unit of the United Nations would need to have treaties it wished to enter into approved by the UN Secretariat in accordance with internal procedure.
29. The use of the infrastructure of an existing IGO to provide the Secretariat for an MEA means that its Secretariat is answerable to two sources of authority: the COP of the MEA, as well as the Governing Council (or a similar authoritative body) of the IGO. Conflict is, in theory, possible when the membership of both bodies is not identical.
30. In fact, however, MEA Secretariats have been granted substantial autonomy from the hosting IGOs, into which they are only loosely integrated. For example, the Climate Change Convention Secretariat is institutionally linked to the UN under a decision of its COP 'while not being fully integrated in the work programme and management structure of any particular department or program'.^{ee} Instructions given by the Governing Council of an IGO that conflict with those given by the COP of the MEA might even be in violation of the IGO's obligations as host institution. Nevertheless, there has not yet been an instance of conflicting guidance from the COP and the IGO to the Secretariat.^{ff}
31. The staff of a Secretariat are the IGO's employees and are therefore subject to its conditions of appointment and employment, usually under the Financial and Staff Regulations and Rules of the United Nations. A hosting IGO controls the human and physical resources that are made available to the MEA Secretariat that it hosts.

^{dd} Decision 15/CP.2, UN Doc. FCCC/CP/1996/15/Add.1, para. 2. The Executive Secretary of the Climate Change Secretariat has also noted on the record that there are different legal opinions as to the international legal personality of the Secretariat: Report of the Subsidiary Body for Implementation on the Work of Its Third Session, UN Doc. FCCC/SBI/1996/12, para. 46; cited in Churchill and Ulfstein, p. 653.

^{ee} Institutional Linkage of the Convention Secretariat to the United Nations, Climate Change COP Decision 14/CP.1, para. 2, U.N. Doc UNFCCC./CP/1995/7/Add.1, at 42.

<<http://www.unfccc.de/resource/docs/cop1/07a01.htm>>

^{ff} Churchill and Ulfstein p. 635.

32. The IGO's deployment of Secretariat staff poses another source of potential conflict with the priorities of the MEA COP. In theory, it is possible that limits imposed by the IGO on the provision of resources to the MEA Secretariat could constrain the Secretariat's activities. However, depending upon the nature of the constraints imposed, as compared to be hosting arrangements, this could also be a breach of the IGO's commitments to host the Secretariat.^{gg}
33. In the case of the Climate Change Convention Secretariat, the UN Secretary-General has power 'to appoint, after consultation with the COP through its Bureau, the head of the Convention Secretariat, with the title of Executive Secretary',^{hh} and the Executive Secretary is accountable to both the COP and to the UN Secretary-General.ⁱⁱ The Executive Secretary is then able to appoint other officials to the Secretariat on behalf of the UN Secretary-General.
34. In the case of the Global Environment Facility, arrangements with the host IGO more complex still. The Global Environment Facility draws upon resources within the UN Development Programme to deliver services involving technical assistance and training, within the United Nations Environment Programme to deliver environmental assessments and expertise, and upon the World Bank as repository for the Global Environmental Trust Fund. The UN Office of Legal Affairs had recommended that, instead of the Global Environment Facility, the World Bank formalise any treaty agreement because the Council of the Global Environment Facility did not have the legal capacity to enter into treaties.^{jj} That is, the Council of the Global Environment Facility lacked international legal personality in its own right and treaty making power needed to be exercised by the World Bank, of which it was a subordinate unit.
35. The usual mechanism to arrange hosting of an MEA Secretariat by an IGO is parallel decision-making in each institution, based on consultations that have led to a common mutual understanding. Thus, a decision made by States negotiating an MEA or by the MEA COP is coordinated with a parallel decision made by the governing body of the hosting IGO.
36. For example, the UN General Assembly adopted a resolution that agreed to endorse institutional linkage between the Climate Change Secretariat and the United Nations.^{kk} The adoption of a Memorandum of Understanding setting out the relationship between the MEA Secretariat and the hosting IGO does not seem to have been considered necessary. Similarly, the establishment of the Global Environment Facility was established by parallel resolutions adopted by the governing organs

^{gg} Geir and Ulfstein p. 635.

^{hh} Institutional Linkage of the Convention Secretariat to the United Nations, Climate Change COP Decision 14/CP.1.

ⁱⁱ Letter to be President of the Climate Change from the Special Adviser to the Secretary-General (Apr. 5, 1995) UN Doc. FCCC/CP/1995/5/Add.4 annex.

^{jj} UN Doc. A/Ac. 237/74, annex, para. 16 (1994) cited in Churchill and Ulfstein at p. 651.

^{kk} GA Res. 50/115, UNGAOR, 50th Sess, Supp. No. 49, Vol. 1, at 174, UN Doc. A/50/49 (1995).

within the World Bank, the UN Development Programme and the United Nations Environment Programme.¹¹

ANNEX 2

PRACTICE OF OTHER MEAS RELATING TO THE ISSUE OF LEGAL PERSONALITY

1. The Tables below provide a brief survey of relevant Articles of several MEAs, dealing with matters germane to the question of the legal personality of their Secretariats, and actions taken by the Conferences of Parties and Secretariats to confirm such legal status. .

Excerpts from the texts of MEAs dealing with the establishment and empowerment of their respective Secretariats

Table 1 – Text of MEA designates a Secretariat

Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971

Article 8 of the Convention provides that the IUCN shall perform the continuing Bureau duties under the Convention, until another organisation or government is appointed by a majority of two-thirds of all Contracting Parties.

- At the third meeting of the COP, Resolution 3.1 approved of a Convention Bureau to be provided by the IUCN, being an integrated unit funded from the Convention budget and attached to the IUCN and IWRB.
- (At the ninth meeting of the COP, Resolution IX.10 permitted the Bureau to use the title “the Ramsar Secretariat” where suitable.)

Convention Concerning the Protection of World Cultural and Natural Heritage 1972

Article 8 of the Convention establishes the World Heritage Committee within UNESCO. Article 14 provides that the Committee shall be assisted by a Secretariat appointed by the Director-General of UNESCO.

Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973

Article 12 of the Convention states that on entry into force, a Secretariat shall be provided by the Executive Director of UNEP.

Convention on the Conservation of Migratory Species of Wild Animals 1979

¹¹ Jose Alvarez p. 322.

<p><u>Article 9</u> of the Convention establishes a Secretariat, provided on entry into force by the Executive Director of UNEP (or, if UNEP is unable to provide a Secretariat, the COP shall make alternative arrangements).</p> <p>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998</p> <p><u>Article 19</u> of the Convention establishes a Secretariat, whose functions shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as agreed between them and approved by the COP.</p> <p>The COP may decide, by three-fourths majority of present and voting Parties, to entrust the Secretariat functions to one or more other competent international organisations, should it find the Secretariat not functioning as intended.</p> <p>Stockholm Convention on Persistent Organic Pollutants 2001</p> <p><u>Article 20</u> of the Convention establishes a Secretariat, whose functions are to be performed by the Executive Director of UNEP, unless the COP decides by three-fourths majority of present and voting Parties to entrust the Secretariat functions to one or more other international organisations.</p> <p>International Treaty on Plant Genetic Resources for Food and Agriculture 2001</p> <p><u>Article 20</u> of the Convention provides that a Secretary shall be appointed by the Director-General of FAO, with the approval of the Governing Body, and is to be assisted by such staff as may be required.</p>

Table 2 – Conference of Parties to MEA to designate a Secretariat

<p>Vienna Convention for the Protection of the Ozone Layer 1985</p> <p><u>Article 7</u> of the Convention provides that the Secretariat functions will be carried out on an interim basis by UNEP until completion of the first ordinary meeting of the COP.</p> <p>At its first ordinary meeting, the COP shall designate the Secretariat from amongst those existing competent international organisations willing to perform as Secretariat.</p> <ul style="list-style-type: none">• At the first meeting of the COP, the COP decided to designate UNEP as the Secretariat. <p>Montreal Protocol on Substances that Deplete the Ozone Layer 1987</p> <p><u>Article 1</u> defines the term ‘Secretariat’ as used within the protocol as the Secretariat of the Vienna Convention for the Protection of the Ozone Layer (Article 7.1(c) of which requires the Convention’s Secretariat to perform the functions assigned to it by any protocol).</p>

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989

Article 16 of the Convention provides that the Secretariat functions will be carried out on an interim basis by UNEP until completion of the first meeting of the COP.

At its first meeting, the COP shall designate the Secretariat from among those existing intergovernmental organisations willing to perform as Secretariat.

- Decision I/7 requested UNEP to carry out the functions of Secretariat.

United Nations Framework Convention on Climate Change 1992

Article 8 establishes a Secretariat, whose functions are to be carried out on an interim basis (under Article 21) by the Secretariat established by the General Assembly of the UN in Resolution 45/212 until completion of the first session of the COP.

Under Article 8, the COP, at its first meeting, shall designate a permanent Secretariat.

- Decision 14/CP.1 accepted administrative support arrangements for the Secretariat to be provided by the United Nations, without the Secretariat being fully integrated into the structure of any particular department or programme of the UN.

Convention on Biological Diversity 1992

Article 24 of the Convention establishes a Secretariat, to be designated by the COP at its first ordinary meeting from amongst the competent international organisations willing to perform as the Secretariat.

- COP 1 Decision I/4 designated UNEP to carry out the functions of the Secretariat.

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa 1994

Article 23 of the Convention establishes a Secretariat, to be designated by the COP at its first ordinary meeting.

- Decision 3/COP.1 accepted administrative and support arrangements for the Secretariat to be provided by the United Nations, without the Secretariat being fully integrated into the structure of any particular department or programme of the UN.

Cartagena Protocol on Biosafety to the Convention on Biological Diversity 1992, 2000

Article 31 provides that the Secretariat established by Article 24 of the CBD shall serve as Secretariat to the Protocol, and its functions shall apply to the Protocol. Any distinct costs of Secretariat services for the Protocol shall be met by the parties to the Protocol.

Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997

Article 14 provides that the Secretariat established by Article 8 of the UNFCCC shall serve as Secretariat to the Protocol, and its functions shall apply to the Protocol.

Table 3 - Functions of Secretariats

<p>Convention on Biological Diversity 1992 <u>Article 16 - Secretariat</u> 1. The functions of the Secretariat shall be: (k) 1. To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties. 2. The Secretariat functions will be carried out on an interim basis by UNEP until the completion of the first meeting of the Conference of the Parties held pursuant to Article 15. 3. At its first meeting, the Conference of the Parties shall designate the Secretariat from among those existing competent intergovernmental organisations which have signified their willingness to carry out the Secretariat functions under this Convention. At this meeting, the Conference of the Parties shall also evaluate the implementation by the interim Secretariat of the functions assigned to it, in particular under paragraph 1 above, and decide upon the structures appropriate for those functions.</p>
<p>Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 <u>Article XII - The Secretariat</u> 2. The functions of the Secretariat shall be: (a) to perform any other function as may be entrusted to it by the Parties.</p>
<p>Convention on the Conservation of Migratory Species of Wild Animals 1979 <u>Article IX - The Secretariat</u> 4. The functions of the Secretariat shall be: (k) to perform any other function entrusted to it under this Convention or by the Conference of the Parties.</p>
<p>Vienna Convention for the Protection of the Ozone Layer 1985 <u>Article 7 - Secretariat</u> 1. The functions of the Secretariat shall be: (f) to perform such other functions as may be determined by the Conference of the Parties.</p>
<p>Montreal Protocol on Substances that Deplete the Ozone Layer 1987 <u>Article 12 - Secretariat</u> For the purposes of this Protocol, the Secretariat shall: (g) perform such other functions for the achievement of the purposes of this Protocol as may be assigned to it by the Parties.</p>

Article 13 - Financial Provisions

1. The funds required for the operation of this Protocol, including those for the functioning of the Secretariat related to this Protocol, shall be charged exclusively against contributions from the Parties.

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989

Article 16 - Secretariat

1. The functions of the Secretariat shall be:
 - (j) To co-operate with Parties and with relevant and competent international organisations and agencies in the provision of experts and equipment for the purpose of rapid assistance to States in the event of an emergency situation; and
 - (k) To perform such other functions relevant to the purposes of this Convention as may be determined by the Conference of the Parties.

Cartagena Protocol on Biosafety to the Convention on Biological Diversity 1992, 2000

Article 31 - Secretariat

1. The Secretariat established by Article 24 of the Convention shall serve as the Secretariat to this Protocol.
2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, mutatis mutandis, to this Protocol.
3. To the extent that they are distinct, the costs of the Secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

United Nations Framework Convention on Climate Change 1992

Article 8 - Secretariat

2. The functions of the Secretariat shall be:
 - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (g) To perform the other Secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a permanent Secretariat and make arrangements for its functioning.

Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997

Article 14

1. The Secretariat established by Article 8 of the Convention shall serve as the Secretariat of this Protocol.

2. Article 8, paragraph 2, of the Convention on the functions of the Secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the Secretariat, shall apply mutatis mutandis to this Protocol. The Secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa 1994

Article 23 - Permanent Secretariat

2. The functions of the Permanent Secretariat shall be:
 - (e) to enter, under the guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions;
 - (g) to perform such other Secretariat functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a Permanent Secretariat and make arrangements for its functioning.

Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade 1998

Secretariat

2. The functions of the Secretariat shall be:
 - (d) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (e) to perform the other Secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.
3. The Secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties.

Stockholm Convention on Persistent Organic Pollutants 2001

Article 20 - Secretariat

2. The functions of the Secretariat shall be:
 - (e) to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
 - (f) to perform the other Secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

Table 4 - Actions of the Conferences of Parties and Secretariats of MEAs, relating to investment of legal personality in the respective Secretariats

Convention on the Conservation of Migratory Species of Wild Animals 1979

Article IX of the Convention establishes the Secretariat of this convention as follows: “Upon entry into force of this Convention, the Secretariat is provided by the Executive Director of the United Nations Environment Programme. To the extent and in the manner he considers appropriate, he may be assisted by suitable intergovernmental or non-governmental, international or national agencies and bodies technically qualified in protection, conservation and management of wild animals. If the United Nations Environment Program is no longer able to provide the Secretariat, the Conference of the Parties shall make alternative arrangements for the Secretariat.”

The functions of the Secretariat described in the text of the CMS do not provide any provisions that allow the Secretariat to enter into administrative and contractual arrangements as may be required for the effective discharge of its functions. As a result, for a number of years the Convention Secretariat’s juridical personality in the host country was unclear. *At the Sixth Meeting of the Conference of the Parties, it was noted that the United Nations Office for Legal Affairs and UNEP had advised, for the avoidance of any doubt, that a decision along the lines of other conventions (e.g. UNFCCC and UNCCD) should be expressly adopted by the respective competent body, that is the Standing Committee or the Conference of the Parties, to confer juridical personality and legal capacity on the Convention Secretariat.*

In Resolution 6.9 the CMS COP decided that “The Convention Secretariat should possess in the host country such legal capacity as is necessary for the effective discharge of its functions under the Convention, in particular to contract, to acquire and dispose of movable and immovable property and to institute legal proceedings.”

*Accordingly, a complementary host government agreement, in addition to the general agreement between the United Nations and the Federal Republic of Germany, was concluded in 2002 between the Federal Republic of Germany, the United Nations, and the Secretariat of the CMS. This agreement regulates matters relating to or arising out of the applicability mutatis mutandis of the UNV Headquarters Agreement to the Convention and, on their consent, to the Agreements concluded under CMS auspices, whose Secretariats are co-located with the CMS Secretariat. The agreement will *inter alia*:*

- a) grant persons on official business to CMS Headquarters the same legal status as that provided to persons on official business to the headquarters of UNFCCC and UNCCD;
- b) provide the Secretariat staff with the same legal status as that of the staff of other United Nations agencies in Germany;
- c) supply the CMS Secretariat with the necessary legal capacity in Germany to contract, acquire and dispose of property and institute legal proceedings;

- d) extend, on their consent, the same rights to the Agreements concluded under CMS auspices whose Secretariats are co-located with the Convention Secretariat.

United Nations Framework Convention on Climate Change 1992

The Intergovernmental Negotiating Committee for the Convention (INC), at its eleventh session, decided to recommend to the COP, taking into account, *inter alia*, the advice of the Secretary-General, that “...*the Convention Secretariat be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme.*”

The INC further recommended that such linkage be “*an efficient arrangement for administrative support to the Convention Secretariat that would ensure proper procedures, controls and accountability, while allowing for managerial autonomy, flexibility and full accountability to the Conference of the Parties*”.

In decision 14/CP.1, the COP decided that “*the Convention Secretariat shall be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme.*”

Both the INC and the UN Secretary-General underlined that the autonomy of the Secretariat remained a paramount consideration. Thus, the capacities of relevant Departments and Programmes of the UN would be engaged “*without assigning supervision of the Secretariat to any one of them.* Further, the UN Secretary-General emphasised that the institutional arrangement should respect the distinct character of the Convention and provide for the autonomy, responsiveness and accountability of its Secretariat.

Although, the UNFCCC Secretariat is institutionally linked to the UN it is not an organ of the UN. The UN Office of Legal Affairs (OLA) has re-affirmed this in a memorandum to the Executive Secretary dated 30 June 2006, which stated that “the bodies established under the UNFCCC and the Kyoto Protocol are not United Nations organs.” The Secretariat is an autonomous and independent treaty body accountable, first and foremost, to the COP.

ANNEX 3

ADDRESSING THE CHALLENGES FACING THE RAMSAR SECRETARIAT UNDER THE THREE OPTIONS		
CURRENT ARRANGEMENTS WITH IUCN	AS AN INTERGOVERNMENTAL ORGANISATION	JOINING THE UNITED NATIONS IN SOME WAY
<p>International cooperation agreements</p> <p>1. Since the Ramsar Secretariat, like other MEA Secretariats, has not been granted full international legal personality by its Contracting Parties, it would be prudent for the Secretariat to conclude MOUs with governments rather than formal treaties or “binding agreements” with States (e.g. host country arrangements for convening meetings of Ramsar COPs). Similarly, it is appropriate to conclude MOUs with the UN, its agencies or other MEA Secretariats.</p> <p>Travel visas for Ramsar Secretariat staff</p> <p>The Swiss Government has informed the Ramsar Secretariat that, in November 2008, Switzerland will formally enter the Schengen Area. By then, the “Permits B or C” of non-Swiss staff will allow them to travel (as a tourist, up to 90 days) inside the entire Schengen Area</p>	<p>A new federal law (192.12) entered into force on 1 January 2008 which allows Switzerland to register the Ramsar Secretariat as an International Organization or an Intergovernmental Organization (IGO) through the conclusion of a “host agreement” (accord de siège). This option provides diplomatic privileges, immunities, and specific diplomatic instruments that may be a solution to the following problems (but this option has its own shortcomings):</p> <p style="text-align: center;">Problem 1: difficulty in obtaining travel visas</p> <p>The legitimization card would be issued by Switzerland, and this card is the best tool for obtaining a visa from consulates in Geneva.</p> <p style="text-align: center;">Problem 2: difficulty for our delegation to obtain recognition at international meetings</p> <p>The status of an International Organization is likely to raise the profile of the Secretariat, but there is no guarantee that the UN system will be more accessible than in the present situation.</p> <p style="text-align: center;">Problem 3: difficulty in obtaining work permits for spouses</p>	<p>This option would provide almost the same privileges, immunities and other advantages that are offered to an International or Intergovernmental Organization with the following distinctions in connection with the problems of the Secretariat:</p> <p style="text-align: center;">Problem 1: difficulty in obtaining travel visas</p> <p>In addition to the legitimization card that is issued by the host country, the United Nations provide a Laissez-Passer that is recognized by most consulates. Furthermore, a special internal service is available for visa processing.</p> <p style="text-align: center;">Problem 2: difficulty for our delegation to obtain recognition at inter-national</p>

<p>without the need of a specific visa, providing a partial solution to the difficulties in obtaining travel visas for Ramsar Secretariat staff.</p> <p>Beyond the Schengen area, it remains the responsibility of Contracting Parties to the Ramsar Convention to facilitate travel to or through their countries for Ramsar Secretariat staff. This duty could be reinforced in a COP resolution that calls upon all Contracting Parties to facilitate the delivery of visas to Ramsar Secretariat staff travelling on official business.</p> <p>Recognition of Ramsar Convention delegations' credentials</p> <p>The COP could adopt a Resolution calling upon States and IGOs to accord to the Ramsar Secretariat the same status at international meetings as is accorded to Secretariats of other MEAs. While that Resolution would not be binding on non-parties, it would be an expression of the will of the Contracting Parties that is not likely to be disregarded by those of other MEAs, the UN Secretariat and other IGOs, in which some or all of the Ramsar Contracting Parties participate.</p> <p>A draft Resolution could be</p>	<p>The privileges, immunities and other advantages include a procedure that facilitates access to job opportunities for spouses/ husbands.</p> <p>Problem 4: potential awkwardness in making binding contracts as Ramsar, which has no legal power to sign contracts</p> <p>This option would definitely put an end to this problem.</p> <p>Problem 5: legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)</p> <p>The Secretariat would be fully responsible for all administrative, financial and human resource matters.</p> <p>Problem 8: IUCN controls our financial procedures in ways that may not be suitable for us.</p> <p>This would no longer be a problem.</p> <p>New challenges</p> <p>To assume this option, the Secretariat would need to establish the following cumbersome administrative systems independently:</p> <ul style="list-style-type: none"> • Social security scheme (equivalent AVS/1er pilier) and pension scheme (2e pilier), which has to be submitted to 	<p>meetings</p> <p>As a UN body, the Secretariat would have access to all relevant UN meetings with a clear recognition of the staff representing the Secretariat.</p> <p>Problem 3: difficulty in obtaining work permits for spouses</p> <p>The privileges, immunities and other advantages include a procedure that facilitates access to job opportunities for spouses/ husbands.</p> <p>Problem 4: potential awkwardness in making binding contracts as Ramsar, which has no legal power to sign contracts</p> <p>This problem would likely remain unsolved.</p> <p>Problem 5: legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)</p>
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<p>adopted at the Tenth Meeting of the COP requesting that Contracting Parties and other IGOs to recognise the credentials of delegations from the Ramsar Secretariat on the same legal basis as Secretariats from other MEAs. The resolution could also urge the Ramsar Secretary-General to intensify the action that he taking with relevant organisations, including the United Nations system, to secure for the Secretariat the same status as is accorded by them to the Secretariats of other MEAs.</p> <p>Work permits for spouses of non-Swiss staff members</p> <p>The Swiss authorities have informed the Secretariat that, in principle, spouses should normally be able to obtain work permits without major problems, as Switzerland has a policy of facilitating the access of spouses to the labour market (as long as they fulfil the requirements of existing job positions, they can work in their respective professions if they are offered a contract) and that the employer (i.e. the Ramsar Secretary-General) needs to actively support permit requests from spouses of staff. To this end, he should contact the Swiss Mission in Geneva so that that they can facilitate</p>	<p>the relevant Swiss Authority for validation.</p> <ul style="list-style-type: none"> • Staff insurances • Jurisdictional arrangement similar to the administrative court of the UN or the ILO, as Swiss tribunals would no longer be competent for the Ramsar Secretariat as an independent international organization; this will also require a validation by the Swiss relevant authority. • To obtain a tax exemption for all staff members, including Swiss citizens, the Secretariat would have to establish an internal system similar to the IUCN system to retain an equivalent tax from the salary of all staff members. 	<p>The legal liability might be outside the control of the Secretariat, since another UN body would have the administrative and financial responsibilities concerning the Secretariat.</p> <p>Problem 9: When in the field, our staff does not have access to a network of logistical and security assistance, as UN staff would, for example</p> <p>This option provides all security arrangements and operational tools directly managed by a specialized UN unit.</p> <p>New challenges from entering the United Nations system</p> <p>Entering the UN system would require that the staff members become UN employees, i.e. they would have to leave the Swiss social security system. Staff would integrate the</p>
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<p>the process. They have also informed that children normally receive the same permits as their parents.</p> <p>Making binding contracts on behalf of the Ramsar Secretariat</p> <p>The delegation of authority from the IUCN Director-General to the Ramsar Secretary-General, signed on 29 January 1993, expressly delegates the authority to enter into contracts (paragraph I (B)). Accordingly, there should not be a legal impediment to the Secretary general; entering into contracts that are valid within Switzerland under Swiss Law.</p> <p>Legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)</p> <p>This matter is dealt with in the Service Agreements that are entered into between the IUCN Director-General and the Standing Committee of the Ramsar Convention. The relevant paragraph of the draft agreement currently under negotiation reads as follows:</p> <p style="text-align: center;">LIABILITY AND INDEMNIFICATION</p> <p>The Parties shall ensure, with the assistance of IUCN's insurance broker, that there is sufficient insurance coverage to protect against any risk related to any acts and omissions by Ramsar staff.</p>		<p>UN social security, insurance, jurisdiction, etc. and have to leave the Swiss pension schemes such as AVS and 2e pilier.</p> <p>Individual solutions would need to be identified for the reimbursement of earlier payments at retirement age.</p> <p>It would also be necessary to negotiate an agreement to enter the UN with existing staff (rather than advertising all the UN-approved positions and recruiting anew).</p> <p>Non-Swiss staff would have to give up their "Permis B or C" (which allows them to take up any work offered to them in Switzerland) to be replaced by a UN "carte de legitimization". They can retain this card until they leave their work at the UN. Children would also receive a "carte de legitimization" until the age of 25. Afterwards, they would have to apply for a Swiss permit if they wish to work in Switzerland.</p>
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<p>To the extent that such insurance coverage is unavailable or inapplicable, and consistent with the provisions in para. xxx of the Delegation of Authority from the DG to the SG (which was signed by IUCN and Ramsar on dd/mm/yyyy), Ramsar, shall indemnify and hold IUCN harmless for and against all damages, claims, losses and expenses (including legal fees) that IUCN may sustain or incur in connection with its performance of this agreement. It is understood that IUCN's liability to Ramsar shall be limited solely to damages caused by IUCN's negligence or wilful misconduct in the performance of the services hereunder.”</p> <p>Accordingly, the Ramsar Secretariat is responsible for ensuring that adequate insurance coverage is taken to cover such eventualities.</p> <p>Difficulty in paying contributions to Ramsar Secretariat</p> <p>Even though the Ramsar Secretariat is not without a certain degree of domestic legal personality, as for example, to enter into contracts under the delegated authority, the question whether this is sufficient to enable the Secretariat to open a Bank account in its name under Swiss Law is a</p>		<p>After leaving the UN, staff would have to apply again to obtain a new Swiss work or residence permit (for retired persons without a professional income wishing to remain in Switzerland). Each such case would be examined by the authorities on its individual merit. <i>A priori</i>, ex-UN employees would not be disadvantaged compared to ex-IUCN employees who remained under the Swiss system, although applying anew for a residence permit would introduce a large element of risk for non-Swiss staff who wish to remain in Switzerland.</p>
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<p>matter that needs to be clarified with the Swiss authorities. However, it must be recognised that the financial rules and regulations of IUCN will continue to apply to the Secretariat as an integral part of the relationship that it has with the IUCN under Article 8 of the Ramsar Convention, even if a Bank Account is opened in its name.</p> <p>Non-Swiss employees may be losing privileges of being taxpayers in their communes</p> <p>The Swiss authorities have stated that non-Swiss employees of IUCN and Ramsar are exempt from taxes. IUCN and the Ramsar Secretariat retain at source an equivalent amount of income from non-Swiss staff, which ensures an equal salary with the Swiss staff members who are not tax-exempt. Thus, non-Swiss staff members are not considered taxpayers in their communes.</p> <p>2. There seems to be no solution to change this situation unless IUCN were to renounce its agreement with Switzerland that exempts it from paying taxes (which is unlikely). An agreement whereby IUCN staff would pay taxes and Switzerland</p>		
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<p>would return the equivalent amount to Ramsar/IUCN is understood not to be possible, as there is no legal basis for this kind of agreement in the Swiss law.</p> <p>However, the only privilege foregone by non-Swiss staff so far identified is access for small children to communal crèches. As an answer to this situation, the UN has most probably established its own crèches. IUCN looked into this possibility, but considered it too expensive.</p> <p>Lack of staff access when in the field to UN logistical and security assistance</p> <p>Provision of logistical and security assistance to the staff of the Ramsar Secretariat when they travel to member countries is the responsibility of the member governments. Accordingly, it is possible for this matter too, to be alluded to in any resolution that the Standing Committee may wish to recommend to the Conference of Parties on Secretariat Matters.</p>		
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ANNEX 4

COSTS AND BENEFITS OF THE THREE OPTIONS

CURRENT ARRANGEMENT WITH IUCN	AS AN INTERGOVERNMENTAL ORGANISATION	JOINING THE UNITED NATIONS IN SOME WAY
<p><u>BENEFITS</u></p> <p>Action by SC/COP confirming legal position of secretariat could:</p> <ol style="list-style-type: none"> 1. Enable the Ramsar Secretariat to function more effectively 2. Pave the way for the Ramsar Convention to be accorded greater recognition among the Secretariats of other MEAs 3. Enable the Ramsar Secretariat to collaborate closely and effectively with the Governments, the United Nations and its agencies and bodies as well as other MEA institutions 4. Strengthen mutual trust and cooperation with the host institutions IUCN <p><u>COSTS</u></p> <p>Hardly any additional costs, except perhaps funds required for more intensified secretariat activities in promoting international cooperation</p>	<p><u>BENEFITS</u></p> <ol style="list-style-type: none"> 1. This could pave the way for addressing some of the international personality deficits faced by the Secretariat, 2. Strengthen the domestic legal personality attributes of the Secretariat with capacities to enter into contracts and be held fully responsible and legally liable for all administrative, financial and human resource matters. <p><u>COSTS</u></p> <p>Serious financial and legal consequences:, including having to establish its own rules and regulations and administrative systems independently for pensions, staff insurance as well as jurisdictional arrangements. Also obtain tax exemption for all staff members, including Swiss citizens.</p>	<ol style="list-style-type: none"> 1. a Trust Fund(s) established at UNEP to hold all funds received by the Ramsar Secretariat managed by Executive-Director of UNEP in accordance to UN rules and regulations. 2. Staff would be recruited by the UNEP Executive-Director and existing staff would become UN staff, subject to the UN staff rules and regulations and entitled to the UN privileges and immunities and to a pension 3. Facilitate closer cooperation with UNEP in its work programme. 4. Thus the Secretariat would no longer be confronted with the challenges listed in Part 1 of this report. <p><u>COSTS</u></p> <ul style="list-style-type: none"> • An administrative fee of 13% would be charged to the Trust Fund(s) to meet the administrative expenses that UNEP May also be other charges. • Please see Annex 5 for additional cost, over Option 1

ANNEX 5

COMPARISON OF THE FIANCIAL COSTS OF OPTIONS 1 & 3
(Compiled by the Secretariats of the Ramsar Convention and UNEP)

[Tables showing salaries of present Ramsar staff has been removed from this public version of the document. Please consult with the Secretary General if more information is required.]

EXPENDITURES (in '000 Swiss francs)	IUCN Administered	UNEP Administered	Comments
Staff Cost	2,588	3,576	
Staff Provision	25		included in UNEP staff cost
Hiring Interns	26		UNEP financial rules does not allow payments of interns
Travel	124	124	
Purchase of equipment	15	15	
IUCN - Admin*	225		included in UNEP 13%PSC
IUCN - HR*	82		included in UNEP 13%PSC
IUCN - IMG*	91		to be clarified by RAMSAR
IUCN Fin/Accounting*	97		included in UNEP 13%PSC
Database	170	170	
Communications	151	151	
Reporting	26	26	
Standing commtt, STRP and Reg Rep support	47	47	
STRP Support Services	206	206	
Support to Regional Initiatives	279	279	
Project Subcontracting/External Grants			
Depreciation			
Auditor's Fees			included in UNEP 13%PSC
Stationery and office supplies	87	87	
Public relations/ Promotion			
Outreach CEPA	30	30	
Hospitality			
Bank Charges			
Miscellaneous			
Provision on outstanding dues	50	50	
Exchange loss	15	15	
Cop related expenses	33	33	
Rent			
Total Expenditure	4,367	4,809	
UNEP 13%PSC	-	625	
Grand Total	4,367	5,434	

NOTES

*Allocation of IUCN charges between the categories not consistent across years

** Includes depreciation, auditors fee, stationary and PR, hospitality and bank charges



MEMORANDUM

EXPLANATORY NOTE ON BASIS OF COMPUTATION OF COST OF THE RAMSAR SECRETARIAT UNDER OPTION 3- JOINING UNEP

- 1) **Estimated salary cost RAMSAR staff (comparison UNEP salary cost and IUCN salary cost).**
 - a) The UNHQ standard costs for the Geneva duty station have been used to calculate the UNEP salary cost. Those costs are higher than the UNON standard cost for Geneva but enable us to be on the safe side.
 - b) Reviewed the job descriptions provided by RAMSAR and the proposed grading in the UN system done by HRMS and compared with similar positions in UNEP managed MEAs with a similar scope of responsibilities.
 - c) Concerning administrative staff, identified tasks that are normally undertaken by UNEP HQ and covered under the UNEP 13%PSC. For instance the post of administrative officer has tasks concerning the invoicing of contributions, HRMS duties, normally undertaken by CSS and UNON under the 13%PSC. I have therefore reviewed the grading accordingly on the GS level to cover the other tasks.
 - d) Noted that RAMSAR is paying salary cost for interns. These costs have not been included for the UNEP costing as our financial rules does not allow the payment of salary for interns. RAMSAR will need to clarify whether the interns are actually interns or rather research assistants.
- 2) **Core budget comparison**
 - a) The table has been prepared trying to establish a correspondence between IUCN type of expenditures and UNEP type of expenditures.
 - b) Noted that for 2008 some posts were not fully encumbered and in line with IUCN statement, reviewed the calculation under the UNEP component to have a more realistic comparison.
 - c) The challenge has been to understand what is actually charged to the IUCN component. This might be a major issue to be discussed by Parties in order to compare with the costs to be charged under the 13%PSC by UNEP.
 - d) Noted in the COP 10 documents (RAMSAR COP 10 doc .18 para. 26) that the overhead service charges agreement with IUCN is being renegotiated. The Ramsar secretariat is estimating that those charges might be increased due to the new internal controls required by Switzerland (Presumably, for tax purposes). Those type of services (and probably others) would not be necessary in case RAMSAR would be managed by UNEP. It is of course at this stage difficult to assess the potential savings that the RAMSAR would benefit by joining UNEP in this particular field.
 - e) According to the table the estimated income generated under the UNEP PSC would be CHF 625,000. The Executive Director of UNEP might decide to allocate part of those funds to cover the cost of a post of an administrative nature presently charged to the core budget. However this will require a thorough evaluation of the actual income generated under the PSC for the RAMSAR Trust fund and an evaluation of the scope of administrative tasks to be undertaken by a RAMSAR managed by UNEP.



UNITED NATIONS ENVIRONMENT PROGRAMME

Programme des Nations Unies pour l'environnement Programa de las Naciones Unidas para el Medio Ambiente
Программа Организации Объединенных Наций по окружающей среде برنامج الأمم المتحدة للبيئة

联合国环境规划署



MEMORANDUM

- f) The table providing some operating costs including rent was unavailable. For information purpose in UNOG those cost are subsidized by the Swiss and amount to CHF 90 per square meter.



UNITED NATIONS ENVIRONMENT PROGRAMME

Programme des Nations Unies pour l'environnement Programa de las Naciones Unidas para el Medio Ambiente
Программа Организации Объединенных Наций по окружающей среде برنامج الأمم المتحدة للبيئة

联合国环境规划署



MEMORANDUM

3) Conclusion

- a) From the table it seems clear that the salary cost of a UNEP managed RAMSAR are higher than an IUCN managed RAMSAR. Although those UNEP salary costs were on the high side for estimation purposes this seems to remain so.
- b) The benefit of joining UNEP should be looked elsewhere and the Parties should assess the substantive and administrative benefits. For instance noted that for COP 10 the RAMSAR secretariat is requesting the establishment of a legal advisor post (20%). May be such services could be provided directly by UNEP. The same applies for other new post (IT officer).
- c) Finally to be accurate we would need to know the exact proposed location of the future RAMSAR, which would presumably be the UNEP premises in Geneva.