

Agenda item 5.2

Legal status of the Ramsar Convention Secretariat

Action requested: The Standing Committee is invited to a) provide comments about the actions so far undertaken in this matter and b) provide guidance on the further exploration of options to be presented for consideration at COP10.

Note by the Secretariat: The present document provides much of the same background and developments that were found in DOC. SC36-15 for the 36th meeting of the Standing Committee, but it incorporates updates on all developments since that meeting.

1. Although the Ramsar Convention itself is recognized by the United Nations as an accredited intergovernmental treaty (UN Treaty Series No. 14583), the Secretariat of the Convention has no recognition *per se*, as it is administered by IUCN (Article 8.1 of the treaty text). In one sense, this is not different from the status of the secretariats of the CBD or CITES within UNEP – but the umbrella of UNEP gives a different and unchallenged status to those secretariats.
2. In Resolution IX.10, the Conference of the Contracting Parties instructed the Secretary General “to engage in a consultative process with appropriate bodies such as IUCN and UNESCO, as well as the government of the host country and other interested organizations and governments, regarding the options, as well as legal and practical implications, for the transformation of the status of the Ramsar Secretariat towards an International Organization or other status whilst still recognizing and maintaining its links with IUCN and the host country.”
3. 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 problem and options for solutions for its next meeting. The Committee agreed that the Director General of IUCN should be formally approached about interim solutions to ensure that the Secretariat is properly represented at all relevant UN meetings.”
4. In response to the Standing Committee’s instruction, the present Secretary General appointed a small group to prepare a more informative background on the problem and tentative options for the consideration of the Standing Committee at its 36th meeting.
5. SC36 examined the proposals 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 the three

options, including financial implications, that will permit SC37 to make a recommendation to COP10 on this matter.”

6. The results of that assessment up to now are attached, with the following elements:
 - a) steps so far taken by the Secretariat;
 - b) a list of current issues and problems related to the legal status of the Secretariat;
 - c) recommendations on the way forward, giving available options; and
 - d) a chronological/historical brief with short summaries of the relevant decisions and key provisions in the past.

Assessment of the legal status of the Ramsar Secretariat

Activities and progress from COP9 to Standing Committee 34

In the period following the 9th meeting of the Conference of the Contracting Parties, the Secretariat made initial contact with the government of Switzerland (Ministry of Foreign Affairs, Political Division III, United Nations and other international organizations) and received the advice that the government of Switzerland would prefer to have the views of other bodies in a consolidated form before taking any further action. Consequently, the Secretariat approached UNESCO in December 2005; the response from UNESCO was that, “while UNESCO’s legal office is not in a position to provide detailed advice on this matter, we would like to suggest that the Ramsar Secretariat may find inspiration from precedent and models that exist in the cases of Secretariats of other international conventions that have signed seat agreements with their host country”.

Standing Committee 34

In Decision SC34-11, the Standing Committee encouraged a consultative process with the missions of Ecuador, Gabon, and the Islamic Republic of Iran to assist the Secretariat in moving forward in its efforts to resolve the legal status of the Secretariat and requested a report to SC35, at which time the desirability of creating a working group would be revisited.

The SC instructed the Secretary General to write to the Director General of UNESCO to request a more expeditious reply to the Convention’s inquiry. The Director-General of UNESCO has responded to an invitation to comment on the legal issues involved. His reply did not advance the consideration any further.

An approach was made by the Chair of the Standing Committee and the then-Secretary General to the UN Economic and Social Council (ECOSOC) to request that body to grant observer status to the Secretariat. After considerable discussion, it was agreed with the ECOSOC secretariat not to proceed with this matter.

Standing Committee 35

In Decision SC35-32, 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 problem and options for solutions for its next meeting. The Committee agreed that the Director General of IUCN should be formally

approached about interim solutions to ensure that the Secretariat is properly represented at all relevant UN meetings.”

Actions taken following SC35

In response to that decision, the Secretariat discussed many aspects of the situation but felt that the focus should first be upon agreeing a list of the perceived problems caused by the present legal situation. A small study group was set up within the Secretariat, and these are the problems that were identified (not necessarily in order of importance):

1. Frequent difficulty in obtaining travel visas for Ramsar staff without international organization legitimization.
2. Difficulty in obtaining recognition of our delegation at major international meetings.
3. Impossibility of obtaining work permits for spouses of non-Swiss staff members.
4. Occasional impossibility in making binding contracts as the Ramsar Secretariat, which actually has no legal power to sign contracts.
5. 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.)
6. Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity for the Secretariat.
7. 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.]
8. IUCN controls our financial procedures in ways that may not be suitable for us.
9. When in the field, our staff members do not have access to a network of logistical and security assistance, as UN staff would.

Some of these problems have to do with IUCN specifically, but most are problems caused by not having some kind of status as an international organization.

A number of potential options for solution are being explored. Some have already been tried in the past, and all require further study. Very briefly, these are:

- 1) obtaining significant improvement of the conditions under the IUCN management, including legitimate and authoritative credentials regarding the Ramsar Secretariat: for instance, obtaining recognition as an international organization by UNGA, ECOSOC, etc.;
- 2) obtaining recognition by Switzerland as an international organization seated in this country;

- 3) joining the United Nations system in some way.

Meeting with CITES Secretariat staff

A number of Ramsar staff met with representatives of the staff of the CITES Secretariat on 11 October 2007 to learn about their transition from IUCN to UNEP in the mid-1980s and about how well the above problems might have been resolved, new problems created, etc.

At first, IUCN agreed to administer the CITES Secretariat on behalf of UNEP. However, CITES moved from under the IUCN umbrella in Morges in 1985. As a result, CITES is presently administered by UNEP, and UNEP's staff rules apply. Discussion with CITES staff revealed the following noteworthy points.

Advantages of being under UNEP's administration

UNEP and the UN Office in Geneva (UNOG) provide to CITES in return for the 13% of budget that is charged for services:

- A P4 staff position for fund management;
- Two General Service staff positions for Finance and Personnel;
- A back-up administration team in Nairobi;
- Payroll handled by UNOG;
- Protocol handled by UNOG;
- Visa processing and some travel arrangements provided by UNOG (for official travel of 8+ hours, business class is allowed);
- Medical services for duty travel provided by UNOG;
- Language classes;
- Diplomatic pouch;
- Staff at Grade P5 and above get "Corps Diplomatique (CD)" plates for their cars;
- Petrol card for duty free petrol + use of UN duty free shop;
- UN privileges and immunities are extended to CITES Secretariat staff;
- Carte de légitimation is issued by the Swiss for non-Swiss staff but has different colors for different grades.

In addition, the CITES Secretariat can use the Geneva International Conference Centre infrastructure for free (services have to be paid for).

Shortcomings of being under UNEP's administration

- Staff hiring is handled entirely by the UN "Galaxy" system, whereby the post is classified by the UN (UN guidelines for classifying posts can be obtained), and sometimes this results in considerable delay. All posts are advertised internally to the UN.
- The CITES Secretariat recognizes that there is no express recognition of the Secretariat's legal capacity; however, the CITES Secretariat also notes that it nonetheless has been entering into administrative and contractual arrangements with other international bodies for more than thirty years.

Analysis of other experiences of MEAs administered by UNEP

This first analysis was based on the official documents available on the Web sites of the following conventions:

Convention on the Conservation of Migratory Species of Wild Animals (CMS)

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. Therefore, like CITES, the CMS Convention Secretariat did not initially have a legal capacity.

However, in addition to the general agreement between the United Nations and the Federal Republic of Germany, a complementary host government agreement was concluded in 2002 between the Federal Republic of Germany, the United Nations, and the Secretariat of the CMS. Article 4 (Legal Capacity) of the 2002 agreement provides that:

- 1) The Convention Secretariat shall possess in the host country the legal capacity to:
 - a) Contract
 - b) Acquire and dispose of movable and immovable property; and
 - c) Institute legal proceedings
- 2) For the purpose of this Article, the Convention Secretariat shall be represented by the Executive Secretary.

Convention on Biological Diversity

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and any protocols. Article 24 about the Secretariat states:

1. A secretariat is hereby established. Its functions shall be:
 - a) To arrange for and service meetings of the Conference of the Parties provided for in Article 23;
 - b) To perform the functions assigned to it by any protocol;
 - c) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties;
 - d) To coordinate with other relevant international bodies and, **in particular to enter into such administrative and contractual arrangements** as may be required for the effective discharge of its functions; and
 - e) To perform such other functions as may be determined by the Conference of the Parties.
2. At its first ordinary meeting, the Conference of the Parties shall designate the secretariat from amongst those existing competent international organizations which

have signified their willingness to carry out the secretariat functions under this Convention.

Analysis of other conventions that are institutionally linked to the United Nations without being integrated in any programme, and administered under UN Rules and Regulations:

United Nations Framework Convention on Climate Change (UNFCCC)

The Secretary-General of the United Nations shall assume the functions of Depositary of this Convention and protocols adopted in accordance with article 17. Article 8 of the Convention establishes the Secretariat and its functions, including the following functions:

- “To ensure the necessary coordination with the secretariats of the relevant international bodies;”
- 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”.

The secretariat is institutionally linked to the United Nations without being integrated in any programme, and administered under United Nations Rules and Regulations. The Executive Secretary reports to the Secretary-General through the Under-Secretary-General heading the Department of Management on administrative and financial matters, and through the Under-Secretary-General heading the Department for Economic and Social Affairs on other matters.

United Nations Convention to Combat Desertification (UNCCD)

The Secretary-General of the United Nations shall be the depositary of the Convention. Article 23 of the Convention text establishes the Secretariat and its functions, which *inter alia* specify:

“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.”

SUMMARY

In summary, the Secretariats of the CBD, UNFCCC, and UNCCD have the legal capacity to enter into administrative and contractual arrangements because this is explicitly established in the text of these conventions. The CMS Convention has this capacity because of a complementary arrangement signed with the host country. CITES does not have the express recognition of this capacity.

Currently, the Secretariat of the Ramsar Convention can enter into administrative and contractual arrangements provided it receives a delegation of authority from the IUCN Director General.

Actions taken following Standing Committee 36

Meeting with the Swiss authorities on 10 March 2008

On 10 March 2008, Anada Tiéga and Tobias Salathé paid a visit to the Swiss authorities in Bern to discuss key issues, especially the legal status of the Ramsar Secretariat.

Participants:

Federal Office of the Environment, Switzerland:

- H. E. Ambassador Thomas Kolly, Chief, International Affairs Division
- Mr. Bruno Oberle, Director of Federal Office for Environment
- Sibylle Vermont, Global Affairs Section, International Affairs Division
- Olivier Biber, Head of Species and Biotope Section, Species Management Division
- Carole Gonet, Species and Biotope Section, Species Management Division

Department of Foreign Affairs, Switzerland:

- Eric Amhof, Head of the Section International Organizations and Host State Policy, Directorate of Political Affairs, Political Division III
- Caroline Kraege, Directorate of International Law
- Martin Krebs, International Environmental Affairs Section, Directorate of Political Affairs, Political Division V
- Paul Garnier, Counselor, Permanent Mission of Switzerland to UNOG (UN Office in Geneva),

Ramsar Secretariat:

- Tiéga Anada, Secretary General
- Tobias Salathé, Senior Regional Advisor for Europe

A number of potential options for solution are being explored. Some have already been tried in the past, and all require further study. Very briefly, these are 1) IUCN continues to host the Secretariat with improvements; 2) the Ramsar Secretariat as an independent International Organization (or Intergovernmental Organization); and 3) the Ramsar Secretariat as part of the United Nations system.

At the outset, Ambassador Kolly suggested focusing on those problems for which Switzerland can provide the Ramsar Secretariat with increased support or where Switzerland can help identify solutions. Reference is made to the numbering in DOC. SC36-15 on the legal status of the Secretariat.

Option 1: IUCN continues to host the Ramsar Secretariat with improvements

Problem 1: difficulty in obtaining travel visas

The Federal authorities informed the Ramsar Secretariat that they have not yet been contacted by IUCN concerning possible modifications of their host country agreement of 1986 recognizing IUCN as a “quasi-governmental” organization and providing the current fiscal agreement. Thus, no negotiations are yet underway of which Ramsar should be an integral part.

It was suggested to prepare a draft Resolution for adoption by COP10, calling on Contracting Parties to facilitate the delivery of visas to Ramsar Secretariat staff (cf. DOC. SC37-3, “Facilitating the work of the Ramsar Secretariat staff at international level”).

On 1 November 2008, Switzerland will formally enter the Schengen Area. By then, the “Permis 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.

Problem 2: difficulty for our delegation to obtain recognition at international meetings

It was also proposed that a draft Resolution be adopted at COP10 requesting Contracting Parties to recognize our delegations as representing an intergovernmental secretariat when they organize such meetings. In this regard, the proposed draft Resolution calls on Contracting Parties hosting such meetings to facilitate the registration of Ramsar Secretariat staff to attend them and, in doing so, to formally recognize that Ramsar staff members are representing the established intergovernmental Secretariat of the global Convention on Wetlands. (cf. DOC. SC37-3, “Facilitating the work of the Ramsar Secretariat staff at international level”).

Presently the Secretary General is taking action to intensify regular communication with important organizations, including the United Nations system. As a result of this active communication, the Secretary General is able to express the views of the Convention during the high level segments of the CSD 16 in China and New York, the UNFCCC COP13 in Bali, the UNEP Extraordinary Session of the Council of Ministers in Monaco, the high level segment of the CBD COP8, and the Council of the UNESCO International Hydrological Programme.

However, The Ramsar Secretariat is still experiencing cases where the Ramsar delegation is classified as representing an NGO when attending major meetings, such that the type of badge provided limits access to the most useful parts of the venue and there is no possibility to express the view of the Convention. The delegates of all other global conventions have free access to the most important parts of the venue of UN meetings. This kind of situation is frustrating for the staff and not helpful for the profile of the Convention.

Problem 3: difficulty in obtaining work permits for spouses

The Swiss authorities informed the Secretariat that in principle spouses should normally obtain work permits without major problems, as Switzerland has a policy of facilitating the access of spouses to the labor market (as long as they fulfill the requirements of existing job positions, they can work in their respective professions if they are offered a contract). The employer (i.e., the 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 they can facilitate the process when difficulties arise because of a misinterpretation of the relevant law.

Children normally receive the same permits as their parents.

Problem 7: loss of taxpayer privileges for non-Swiss staff

Non-Swiss employees of IUCN and Ramsar are exempt from taxes, but IUCN and Ramsar 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. 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). However, when negotiating with Switzerland, the ICRC did opt

for a tax-paying situation. UN employees (Option 3) 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.

However, the only privilege foregone by non-Swiss staff so far identified was the 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.

Option 2: Ramsar Secretariat as an independent International Organization (or Intergovernmental Organization)

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):

Problem 1: difficulty in obtaining 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.

Problem 2: difficulty for our delegation to obtain recognition at international meetings

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.

Problem 3: difficulty in obtaining work permits for spouses

The privileges, immunities and other advantages include a procedure that facilitates access to job opportunities for spouses/ husbands.

Problem 4: potential awkwardness in making binding contracts as Ramsar, which has no legal power to sign contracts

This option would definitely put an end to this problem.

Problem 5: legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)

The Secretariat would be fully responsible for all administrative, financial and human resource matters.

Problem 8: IUCN controls our financial procedures in ways that may not be suitable for us.

This would no longer be a problem.

New challenges

To assume this option, the Secretariat would need to establish the following cumbersome administrative systems independently:

- Social security scheme (equivalent AVS/1er pilier) and pension scheme (2e pilier), which has to be submitted to the relevant Swiss Authority for validation.
- 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.

Option 3: Ramsar Secretariat as part of the United Nation system

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:

Problem 1: difficulty in obtaining travel visas

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.

Problem 2: difficulty for our delegation to obtain 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.

Problem 3: difficulty in obtaining work permits for spouses

The privileges, immunities and other advantages include a procedure that facilitates access to job opportunities for spouses/ husbands.

Problem 4: potential awkwardness in making binding contracts as Ramsar, which has no legal power to sign contracts

This problem would likely remain unsolved.

Problem 5: legal liability of IUCN for Ramsar actions (in case of staff disputes, misappropriation of funds, etc.)

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.

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

This option provides all security arrangements and operational tools directly managed by a specialized UN unit.

New challenges from entering the United Nations system

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 UN social security, insurance, jurisdiction, etc. and have to leave the Swiss pension schemes such as AVS and 2e pilier. Individual solutions would need to be identified for the reimbursement of earlier payments at retirement age.

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).

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.

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. *A priori*, 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.

Additional action taken to understand the UN pension scheme

The Secretary General sent a request to the United Nations Office in Geneva to be informed about the possibilities offered by the UN system regarding the pension. In response, Ms. Renata De Leers, Chief of the Geneva Office of the United Nations Joint Staff Pension Fund (UNJSPF), made a presentation to the Ramsar staff about the UN pension scheme on 14 April 2008.

The United Nations has the UN Joint Staff Pension Fund (UNJSPF) for all UN Staff and associated organizations. The UNJSPF membership is open to the UN specialized agencies and other international, intergovernmental organizations that follow the UN common system with respect to salaries and other conditions of services (article 3b of the UNJSPF regulations). The relevant organizations must also have accepted the UNJSPF regulations and reached an agreement with the Pension Board on the conditions for admission. Actual admission of a non-UN organization to the UNJSPF membership requires a decision of the UN General Assembly, acting upon an affirmative recommendation of the Pension Board (article 3c of the UNJSPF regulations).

All organizations that are in the UN system are automatically part of the UNJSPF mechanism, but all other organizations need to apply for the process of admission. This implies that if the

Ramsar Secretariat joins the UN system through UNEP or any other UN organization, there would be no need to go through the application process.

The process for admission would commence with the formal application for the UNJSPF membership to be submitted on behalf of the Ramsar Secretariat by a duly authorized official. While there is no standard form for such an application, it should indicate full awareness of the requirements for the UNJSPF membership, namely that the entity seeking admission:

- a) is an International Intergovernmental Organization;
- b) adheres to the UN common system of salaries and conditions of services;
- c) agrees to follow the UNJSPF regulations and rules;
- d) accepts the jurisdiction of the UN Administrative Tribunal for pension matters; and
- e) agrees with the UN Joint Staff Pension Board on the conditions of entry.

The application for UNJSPF membership would have to satisfy the following key elements:

- i) Submission by a duly authorized official of the formal application for UNJSPF membership effective 1 January 2009; this should be addressed to the CEO of the Pension Fund.
- ii) Confirmation that the Ramsar Secretariat is eligible for UNJSPF membership by submitting the International Convention/Agreement establishing the description of the functioning of the Convention and its Secretariat and the headquarters agreement that the Ramsar Secretariat concluded with the host country, recognizing the organization's privileges and immunities.
- iii) Confirmation that the Ramsar Secretariat has or will follow the UN common system of salaries and conditions of services by submitting copies of the existing Secretariat staff regulations and rules, covering all categories of the Secretariat staff, with a clear indication of how the regulations and rules will be amended to conform to the UN common system by 1 January 2009 (assuming that membership would be requested in 2008 and presented to the Pension Board in July 2008 at the latest, should amendment be needed, and requiring UNJSPF participation by the staff of Ramsar Secretariat).

The three main elements described above must be satisfied before the Ramsar Secretariat's application for membership could be considered at the Pension Board session, with sufficient time for preparation by the UNJSPF secretariat of the necessary documentation for the Board.

Before presentation to the Pension Board, substantial agreement should have been reached on the conditions for the entry of the Ramsar Secretariat into the Pension Fund, covering: a) the acceptance by the Ramsar Secretariat of the UNJSPF regulations and the jurisdiction of the UN Administrative Tribunal for pension matters; and b) agreement on the recognition of past services for pensions made on behalf of the staff before the date of entry into the UNJSPF. This agreement would be complemented by a Memorandum of Understanding between the Fund and the Ramsar Secretariat, to set a policy and procedural framework for the implementation of the agreement.

Consultation with UNEP and UNESCO

On several occasions, the Secretariat followed through with the letters to UNEP's Executive Director requesting UNEP to provide information about the conditions for joining the United Nations system and the related implications. Informal discussions were had with UNEP's Director, Division of Environmental Law and Conventions, during the Extraordinary Session of the Council of Ministers of UNEP in Monaco. A reminder was sent to UNEP Director, Division of Environmental Law and Conventions, but thus far there has been no reply.

A visit was paid to UNESCO Headquarters by the Secretary General and the Senior Advisor for Europe on 7 March 2008, following two letters sent to UNESCO to request advice about the possible option of joining the United Nations system. Following our discussions with the UNESCO legal advisor, a report was sent to get additional information but there has so far been no comment on that report by the Secretariat.

Additional consultation with the secretariats of other conventions

Because of the absence of a reply from UNEP, the Ramsar Secretariat made a request to obtain practical information from the UN Convention to Combat Desertification (UNCCD), the UN Convention Framework on Climate Change (UNFCCC), and the Convention on Migratory Species of Wild Animals (CMS), all located in Bonn, Germany.

Following a positive response from the UNCCD and the CMS, a visit was undertaken to Bonn to meet with the secretariats of those conventions.

Mission to Bonn, Germany, 21 April 08

By Abou Bamba, Sr Advisor - Africa & Paulette Kennedy, Finance Officer

The Senior Advisor for Africa and the Finance Officer went to Bonn, Germany, on 20-21 April 2008 for the purpose of visiting the secretariats of UNCCD and UNEP/CMS and the Federal Ministry of Environment of Germany to discuss the legal status of the Ramsar Secretariat, especially with regard to "Option 3: Ramsar Secretariat as part of the United Nation system". The first meeting took place with the UNCCD Secretariat where they met with Mr. Gerargdo Gùnera-Lazzaroni, Legal Officer, and Mr. Frank M. Meek, Chief Administration and Finance.

General information about the UNCCD

UNCCD has 193 Parties and an annual budget of 7.3 M€ with 57-58 staff members. (Germany adds €562,000 in support in addition to its annual contribution.) In addition to the GEF, it has its own funding mechanism, the Global Mechanism, which provides financial resources to the countries on the DAC list to implement the Convention. It's worth noting that the EU and some small islands which are not part of the UN are parties to the UNCCD.

Possible advantages of Option 3: Ramsar Secretariat as part of the United Nation system

Meeting with the UNCCD

Advantages that facilitate the work of the Convention

The most important advantage offered through this option might be the enabling environment that could enhance the work of the Convention. Being in the UN system could be an asset when it comes to synergy with other MEAs in the Convention's implementation. For instance, the UNCCD has set up several committees with UNFCCC and others that are within the UN

system. The overall impression of the UNCCD staff is that there are more advantages than drawbacks for the UNCCD Secretariat being under the UN system.

The Chief, Administrative and Finance Officer indicated that being under the UN system allows them to do things much more easily (grouping purchases, training, health insurance, pension, etc.) than could isolated IGOs. He indicated that for a small organization like the Ramsar Secretariat, it would be costly, lengthy, etc. to develop our own rules, manual of procedures, staff manual and other key documents for the functioning of any institution.

In response to our question on the risk of losing control of the Convention if Ramsar were to go under the UN, the representatives of the UNCCD answered that even though UNCCD is administered by the UN General Secretariat, the Conference of the Parties (COP) remains the supreme body of the Convention, and no decision can be taken outside the COP or the Committee on the Review of the Implementation of the Convention (CRIC).

The UNCCD team was asked whether there could be any political pressure on the STRP if Ramsar were to join the UN family, and they replied that their Committee on Science and Technology has never had any political pressure from any country or other statutory bodies of the Convention, as they are not dealing with sensitive issues and it is an independent body

Advantages that reinforce staff motivation and commitment to provide high-quality assistance in the implementation of the Convention

UNCCD has a host country agreement that makes provision for many advantages and privileges for both the Secretariat and the staff, regardless of their country of origin. This agreement, which has been signed by the UN, UNCCD Secretariat and the German Government, addresses most of the problems raised in the Ramsar DOC. SC35-16. The legal officer of the UNCCD listed a series of other advantages such as the possibility to stay in Germany if a staff member has worked for UNCCD for at least three years.

The UNCCD does not do its staff recruitment through the Galaxy system, and the Secretariat is fully responsible for recruitment – it was said that New York and Geneva do not interfere.

Payments are made through Geneva or New York, but the Secretariat has its own bank account through which it can make local payments. They have put in a request also to allow local staff (under G5) to be paid out of the local account.

The overall recommendation of the UNCCD to the Ramsar Secretariat was to join the UN system in order to be better positioned to develop synergy with other conventions and benefit from the UN system.

Meeting with the CMS secretariat

The Ramsar delegation met with CMS/AEWA staff, namely Mr. Moulay El Karibi, CMS Deputy Executive Secretary, Mr. Bert Lenten, AEWA Executive Secretary, Mr. Sergey Dereliev, AEWA Technical Adviser, Mr. Francisco Rilla Manta, CMS Information and Capacity Building Officer, and Mr. Marco Barbieri, ASCOBAN Secretariat. They made an excellent presentation on how the Convention and agreements became a UNEP-managed convention and how things have evolved since then.

Perception of the CMS staff about the advantages

Like UNCCD, CMS and AEWA staff were of the view that the advantages under the UN system, both for the financial reasons and for reasons associated with the implementation of the Convention/Agreement, are considerable. These advantages are similar to those concerning the UNCCD

CMS/AEWA indicated that their affiliation to UNEP and the presence of other environment- and sustainable development-related organizations in Bonn is an asset for synergy and collaboration for the implementation of the Convention. The overall impression again was that they were encouraging Ramsar to join the UNEP family for the various reasons explained above and also because they believe that this move would improve the collaboration/synergy with other MEAs that are under the UN.

The UNCCD and the CMS secretariats have created a unit to deal with partnership and external relations; while the UNCCD partnership unit is operational and plays a tremendous role in COP preparation, the CMS one (which has been approved by the COP) is still vacant, but the recruitment process will be completed in the next week or so, according to the DSG.

Perception of the CMS staff about possible drawbacks

The CMS staff mentioned that if Ramsar wanted to be under UNEP, care should be taken to avoid payments having to be made out of Nairobi because of the delays that can sometimes extend up to six months. There was discussion of the recruitment process, which has to be done under Galaxy (which creates some delays), though the recommendations made by the CMS Executive Secretary have always been followed by UNEP headquarters. They haven't yet had a case where the CMS/AEWA preference regarding recruitment was overruled by Nairobi. This poses the problem of the rigidity versus the flexibility of UN rules when applied to organizations that have their secretariats and administrations managed by the UN. It seems not always to be black or white, but rather depends upon how negotiations were made with HQ at the beginning.

Along the same lines, AEWA expressed the view that direct government secondment was not possible anymore as it has to go through HQ first, but the Junior Professional Officer system was still functioning, though each request with clear terms of reference must be sent to HQ for approval.

AEWA/CMS explained the staff mobility policy within the UN, which requires that staff do not spend more than five years in same position depending on the availability of posts within the organization. They also complained about the recruitment process, which can sometimes take up to one and a half years for professional positions; there are ways to avoid this situation, however, through L positions for which one doesn't have to go through a long process, and decisions can be taken by the Executive Secretary of the Convention.

Meeting with the German Ministry of Environment

A third meeting took place with the German Ministry of Environment, which showed a clear interest in having the issue of the absence of a legal status of the Secretariat solved as soon as possible. The discussions were articulated around the i) financial, ii) operational/ implementation and iii) political implications of the establishment of a legal status for the Ramsar Secretariat. The German government would like to have some clarifications on these points and will collaborate with the Secretariat in this regard.

Germany will do a legal analysis taking into consideration all the aspects of option 3 and inform the Secretariat, SC, and the COP accordingly.

Legal opinion on the Ramsar Secretariat

The Ramsar Secretariat consulted five lawyers who made different offers in order to give us a legal opinion on the status of the Ramsar Secretariat. The first lawyer proposed to do the job for 500 CHF per hour to which we had to add another 200 CHF for his assistant. The Swiss Mission to the UN proposed the names of two former UN staff who could do the job; one quoted 200 CHF per day and the other one was not available during the proposed period. We contacted the Washington DC-based Environmental Law Institute (ELI), which quoted 50 USD per day for 20 days to draft a legal opinion regarding options to improve the legal status of the Secretariat with a team of two senior attorneys. IUCN recommended a law firm in Geneva which has not yet made a proposal.

We took the decision to contract Mr. Carl Bruch of ELI who will team up with another attorney. The opinion of the legal advisor will be available during the Standing Committee meeting.

Outline of the expected legal opinion

Overview/purpose/abstract

- I. Background
 - a) Context/need
 - i) Specific concerns
 - b) History
- II. Methodology
 - a) Brief review (1-2 paras each) of different experiences (CMS, CITES, UN WTO, CBD?, WCMC?, UNCCD??, UNFCCC??)
 - b) Brief survey of relevant international instruments (UN policies, UN Charter, 1946 Agreement on the Privileges and Immunities of the United Nations?)
- III. Analysis of Options (focusing particularly on how each option addresses the various concerns raised in Part I)
 - a) Status quo, but better
 - i) NB: law review article arguing that as a body managing an intergovernmental agreement, the Secretariat might be able to argue international legal status (without changing its affiliation with IUCN)
 - b) Independent International Organization
 - c) Become a UN organization
 - i) Independent UN body (e.g., UNFCCC, UNCCD, UN WTO)
 - 1) Where? Gland, Geneva, Bonn, NY
 - ii) Administered by UNEP (e.g., CBD, CITES, CMS)
 - iii) Administered by another UN Agency (e.g., UNESCO)
 - d) Summary (in form of a table with all options)
- IV. Considerations in transitioning (What steps would the Ramsar Secretariat undertake? Over what timeframe? ...)
 - a) Status quo, but better
 - b) Independent International Organization
 - c) Become a UN organization
 - i) Independent UN body
 - ii) Administered by UNEP

iii) [Administered by another UN Agency]

V. Recommendations???

Pension and health benefits of the three options

Following the presentation from UNJSPF, the Secretariat was advised to contact an actuary (a statistician who calculates insurance premiums, risks, dividends, and annuity rates) to prepare a document for a project in three stages. The first stage would be the provision of general information (comparison of benefits and costs of the IUCN fund and the UN fund, advantages and disadvantages of both provision options). This would also include a consideration of issues relating to health cover as well as other ancillary benefits such as unemployment. It would also cover issues relating to the transfer of existing benefits into the UN Fund.

The second stage would be the provision of information to employees, and the third, the transition plan if a move to affiliation to the UN were to take place. This process has not yet been undertaken because of lack of funding; information would be provided to Parties when available.

Estimation of cost implication regarding the three options

The Secretary General has taken the following actions to have an estimate of the costs of options 2 and 3:

- **About Option 3: Joining the UN system: requests made to UNEP and UNESCO:**

A letter was sent on 4 January 2008 to UNEP and UNESCO requesting official information about the conditions and the implications of the option of joining the UN system. Although a visit was paid to UNESCO on 7 March 2008, there is no available information that helps to understand the financial implications of being a UN-managed secretariat. Likewise, there has been no answer from UNEP despite some reminders. The Secretariat will continue to investigate in order to be able to provide the cost estimate of Option 3.

- **About Option 2: Becoming an International, Intergovernmental Organization**

A request has been made to two private companies to provide the Secretariat with quotations for the social security services that can be provided by these companies. The Secretariat is still waiting for replies from the two companies. The Standing Committee will be informed as soon as that information becomes available.

Conclusion and possible interim solutions

The Ramsar Secretariat will continue collecting information to refine the analysis of all possible options.

Summary of possible solutions to current problems, following a preliminary analysis

Issue/Problem	Potential result		
	Option 1: IUCN to continue hosting the Secretariat with significant improvement	Option 2: The Secretariat to be registered as a legal International, Intergovernmental Organization	Option 3: The Secretariat to be administered by a UN agency such as UNEP
1. Difficulty in obtaining travel visas for staff without international organization legitimization	May remain unsolved	Would be solved	Would be solved
2. Difficulty in obtaining recognition of our delegation at major international meetings.	Being solved	Would be solved	Would be solved
3. Difficulty in obtaining work permits for spouses of non-Swiss staff members.	Possibility to be solved	Would be solved	Would be solved through the procedure established for UN agencies
4. Potential impossibility in making binding contracts as Ramsar, which has no legal power to sign contracts.	Unsolved	Would be solved	May remain unsolved
5. Legal liability of IUCN for Ramsar actions (in case of staff disputes, the regional initiatives, misappropriation of funds, etc.).	Remains unsolved	Would be solved	Would be partially solved but with some drawbacks
6. Difficulty some Parties have in paying contributions to Ramsar in the absence of legal identity.	Would remain unsolved	Would be solved	Would remain unsolved
7. Non-Swiss employees do not pay Swiss taxes and may be losing privileges in their communes.	Would remain unsolved	Would remain unsolved	Would remain unsolved
8. IUCN controls our financial procedures in ways that may not be suitable for us.	Remains	Would be solved	May remain unsolved

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.	Would remain unsolved	Would remain unsolved	Would be solved
New problems that may emerge when adopting an option	Current problems remain	Ramsar would need to set up its own social security and pension schemes Ramsar could continue to engage IUCN or UNEP for specific services required. Find alternatives for administrative, financial and accounting services that are currently provided by IUCN.	Find a new alternative for office space (including rent and running cost), administrative, financial and accounting services that are currently provided by IUCN.

Next steps

- 1) Continue to approach the relevant UN bodies, including UNEP and UNOG, for information about the general conditions of such a transition, salary comparisons, legal status and benefits of employees.
- 2) Hold further discussions with the Director General of IUCN, as well as with the Swiss authorities to solicit their ideas and interest about some kind of host arrangement, making clear to them that we are not considering relocation outside of Switzerland.
- 3) Seek legal advice about the three options and the whole process for the two new options.
- 4) Seek advice from an actuary

The pros and cons of various options (including implications for Swiss and non-Swiss staff members), and the positive aspects of the status quo within IUCN (such as the equivalent tax revenue, freedom for hiring and for the STRP, the valuable contributions of the International Organization Partners (IOP) in the implementation of the Convention, etc.), will be discussed further when we have more information.

Documentary historical background

The Convention on Wetlands of International Importance especially as Waterfowl Habitat, signed on 2 February 2 1971.

“Article 8

1. 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.

The Representative of IUCN stated that he was authorized to accept on behalf of IUCN the bureau duties specified in the final text of the Convention.

Formal establishment of the “Ramsar Bureau” by the 3rd Meeting of the Contracting Parties (COP3).

In Resolution 3.1 (1987), the Conference of the Parties agreed that:

- A Convention Bureau shall be provided by IUCN through the establishment of an integrated unit which is funded from the Convention budget and which performs all the tasks required by the Conference of the Contracting Parties. It shall comprise a section attached to IUCN and a section attached to IWRB;
- The policy to be followed by the Bureau shall be determined by the Conference of the Contracting Parties and, between meetings of the Conference of the Contracting Parties, the Bureau shall operate under the supervision of the Standing Committee;
- IUCN shall enter into a cooperative agreement with IWRB for the establishment of a distinct section at IWRB Headquarters to provide technical and scientific advisory services for the Bureau;
- The Convention Bureau provided by IUCN 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;
- The distinct section established by IWRB under the terms of the cooperative agreement concluded with IUCN shall be administratively responsible to the Executive Director of IWRB who shall be responsible to the Conference of the Contracting Parties for financial and personnel administration. For all other purposes, it shall be a component of the Bureau and shall be responsible to the Head of the Convention Bureau at IUCN;
- The civil service salary scale applicable in the country where IUCN is located along with IUCN personnel provisions shall apply to the distinct section established by IUCN;

- The civil service salary scale applicable in the country where IWRB is located along with IWRB personnel provisions shall apply to the distinct section established by IWRB;
- The Convention budget, as approved by the Conference of the Contracting Parties, shall be administered by IUCN. Funds shall be disbursed according to budgetary provisions and instructions given by the Conference of the Contracting Parties;
- 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.

This change, whereby IUCN was asked to provide an integrated Bureau rather than perform itself continuous bureau duties, was accepted by IUCN in a letter from the IUCN Director General to the Ramsar Standing Committee in June 1987.

Transformation of the “Ramsar Bureau” into an independent unit co-located with the Headquarters of IUCN (Decision of COP4).

In 1990, by decision of the 4th meeting of the Conference of the Contracting Parties, the Bureau was transformed into an independent unit co-located with the Headquarters of IUCN. The Secretary General was given sole responsibility for administration of the Convention funds and for all administrative matters other than those requiring the exercise of the legal personality. For those latter matters, formal responsibility rests with the Director General of IUCN. In addition the mandate of the Standing Committee was expanded to include supervision for personnel issues.

Delegation of Authority to the Secretary General of the Convention on Wetlands (document signed on 28.01.1993 between IUCN and Ramsar)

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. The Director General of IUCN, who participated in the discussion regarding the above changes, indicated to the Conference that he concurred with the terms of the decisions.

The document then goes into detail on the major areas of Authority to the Secretary General:

- I) Financial and Budgetary Matters
- II) Personnel Management
- III) Facility Management

Eleventh meeting of the Standing Committee 20-23 October 1992 (Kushiro, Japan)

Document SC11E-12/1031R-A: “Legal Status of the Ramsar Bureau and its Relationship with IUCN”

To summarize, the status of the Bureau has continually evolved since the Convention was signed by the will of the Parties to the Convention and with the concurrence of IUCN. Until 1987 IUCN was the body responsible for the performance of continuing bureau duties for the

Convention. In 1987 the Bureau was established as an autonomous unit within IUCN headed by a Secretary General administratively responsible to the Director General of IUCN. The latter remained responsible to the Parties for the administration of the Convention budget and personnel. In 1990 the Bureau became an independent unit co-located with IUCN. The Secretary General became responsible for the administration of the Convention funds and for all matters other than those requiring the exercise of legal personality. The Standing Committee assumed an increasingly important role as the representative of the Contracting Parties and as a partner in negotiations with IUCN, as evidenced by the signing of the agreement on the use of facilities of the new headquarters building.

Delegation of authority from the IUCN Director General to the Secretary General of the Ramsar Convention: Supplementary Note: 29 January 1993

The Legal and Financial Liability of 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. A list of the administrative and financial responsibilities of the Secretary General to the Director General of IUCN are elaborated on.

Resolution IX.10: Use of the term and status of the “Ramsar Secretariat” (2005)

9. INSTRUCTS the Secretary General to engage in a consultative process with appropriate bodies such as IUCN and UNESCO, as well as the government of the host country and other interested organizations and governments, regarding the options, as well as legal and practical implications, for the transformation of the status of the Ramsar Secretariat towards an International Organization or other status whilst still recognizing and maintaining its links with IUCN and the host country; and
10. REQUESTS the Secretary General to report on the outcome of these consultations through the Standing Committee to COP10.