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I. Introduction

1. The Assembly of States Parties to the International Criminal Court (ICC) (hereinafter “the Assembly”) will require a wide range of secretariat services to enable it to perform various functions which are inherent in the establishment and operation of an institution of this nature, as well as to prepare for functions assigned to the Assembly under the Statute. The Assembly will be operating in six official languages and will be required to provide pre-session, in-session and post-session services for the meetings of the Assembly, its Bureau or any other subsidiary body that the Assembly may establish; arrangements for interpretation, translation, issuance of documents, conference facilities, responses to communications from Governments, the Court and others, etc. The Secretariat of the Assembly will have to prepare the budget of the Assembly. Since the budget of the Court will have to be approved by the Assembly, the Secretariat of the Assembly will have to make arrangements for the translation and issuance as well as the advance circulation of the budget proposal to the participants at the Assembly. The Secretariat of the Assembly will also have to make arrangements for elections, such as the election of the judges, the Prosecutor and the Registrar, etc.

2. The Rome Statute contains no provisions indicating which body will provide secretariat servicing to the Assembly. Paragraph 1 of article 10 of the draft Relationship Agreement between the International Criminal Court and the United Nations (hereinafter “draft ICC/United Nations Relationship Agreement”)¹ stipulates the Organization’s agreement, subject to availability and to any arrangement on costs and expenses, to provide for the meetings of the Assembly of States Parties and its Bureau such facilities and services as may be required, including translation and interpretation services, documentation and conference services. According to paragraph 2 of article 10, “[t]he terms and conditions on which any such facilities or services of the United Nations may be provided shall, as appropriate, be the subject of supplementary arrangements”.

3. Hypothetically, the Assembly could receive substantive secretariat or conference services, or a combination thereof, from the following sources:

- (a) The United Nations Secretariat;
- (b) A secretariat established as an entity within the ICC system;
- (c) An outsourced entity not part of the ICC or United Nations system.

4. The option referred to in paragraph 2 (c) above, i.e. an outsourced entity outside the ICC system or the United Nations system, does not seem advisable inasmuch as a sufficient degree of reliability, accountability, continuity and institutional memory could not be guaranteed with the use of services provided by an outsourced entity.

5. Accordingly, for the purpose of the present paper, the first two options will be considered, namely the United Nations Secretariat and an independent secretariat within the ICC system.

¹ PCNICC/2001/1/Add.1.

II. The United Nations Secretariat

6. The Assembly of States Parties is a non-United Nations treaty body. According to article 112, paragraph 6, of the Rome Statute, it shall meet either at the seat of the Court, i.e. at The Hague or at the Headquarters of the United Nations. According to General Assembly resolution 56/85 of 12 December 2001, the first meeting of the Assembly of States Parties will be held at United Nations Headquarters upon the entry into force of the Statute. In paragraph 9 of the same resolution, the General Assembly requested the Secretary-General to undertake the preparations necessary to convene the meeting. Thus, in the initial stage of the establishment of the Court, the secretariat coverage for the first meeting of the Assembly will be provided by the Secretariat of the United Nations.²

7. In the practice of the Organization, precedents exist in which the United Nations Secretariat or certain of its programmes (for example, the United Nations Environment Programme (UNEP)) have engaged, or are currently engaged, in providing substantive, administrative and other support services to non-United Nations treaty bodies. Such servicing is envisaged in constitutive treaties and endorsed in decisions of the relevant deliberative organs of the Organization and the supreme bodies of the international instruments concerned. For illustration purposes, the following distinctive examples are provided.

A. United Nations Secretariat and the 1982 United Nations Convention on the Law of the Sea

8. Under article 319 (2) (e) of the Law of the Sea Convention, the Secretary-General of the United Nations is entrusted with the responsibility to “convene necessary meetings of States Parties in accordance with the Convention”. Upon the entry into force of the Convention in November 1994, the General Assembly, in its resolution 49/28 of 6 December 1994, requested the Secretary-General “to provide, from within existing resources, such services as may be required for the meetings of States parties to the Convention and for the Commission on the Limits of the Continental Shelf”. Among the functions consequent upon the entry into force of the Convention, the General Assembly, in particular, requested the Secretary-General to prepare for and convene the meetings of States parties to the Convention and provide the necessary services for such meetings, in accordance with the Convention.³ Similarly, the Secretary-General was requested to prepare for the meetings of the Commission on the Limits of the Continental Shelf, and provide the necessary services to the Commission, in accordance with the Convention.⁴

9. In accordance with its most recent resolution on the subject, resolution 56/12 of 28 November 2001, the General Assembly requested the Secretary-General to convene the 12th Meeting of States Parties to the Convention in New York from 16 to 26 April 2002 and to provide the services required.⁵ The General Assembly also

² Article 11 of the draft Relationship Agreement provides that “[t]he United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in article 12, paragraph 1, of the Statute, to United Nations Headquarters when a meeting of the Assembly is to be held.”

³ See General Assembly resolution 49/28, para. 15 (g).

⁴ Ibid., para. 15 (h).

⁵ See General Assembly resolution 56/12, para. 9.

approved the convening by the Secretary-General of the tenth session of the Commission on the Limits of the Continental Shelf in New York starting on 25 March 2002.⁶ Furthermore, the General Assembly requested the Secretary-General to continue to carry out the responsibilities entrusted to him in the Convention and related resolutions of the Assembly, including resolutions 49/28 of 6 December 1994 and 52/26 of 26 December 1997, and to ensure that appropriate resources are made available to the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs for the performance of such responsibilities under the approved budget for the Organization.⁷ The Division has developed an extensive work programme dealing with the Convention and its implementation.

10. The International Tribunal for the Law of the Sea is an autonomous international judicial body with jurisdiction as provided for in the relevant provisions of the Convention and the Statute of the Tribunal annexed thereto. In its resolution 49/28, the General Assembly requested the Secretary-General, from within existing resources, to convene a meeting of States parties relating to the organization of the Tribunal. By the same resolution, the Assembly requested the Secretary-General “to designate ... a United Nations staff member with secretariat support to be charged with making preparations of a practical nature for the organization of the Tribunal, including the establishment of a library”.⁸ A staff member of the Division for Ocean Affairs and the Law of the Sea was seconded to make arrangements for the Tribunal as called for in resolution 49/28. Prior to his election as Registrar, the staff member was appointed as Director of the Registry of the Tribunal.

11. The principles for the provision of conference services by the United Nations to the Tribunal are regulated in article 7 of the 1997 Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea.⁹ The draft ICC/United Nations Relationship Agreement in its article 10 also provides for a similar cooperation.

12. The provisions on administrative cooperation between the United Nations and the Tribunal are contained in article 8 of the 1997 Cooperation and Relationship Agreement. Somewhat similar provisions may be found in article 9 of the draft ICC/United Nations Relationship Agreement.

13. In response to the call in the 1997 Cooperation and Relationship Agreement for the achievement of optimum efficiency in the use of facilities, staff and services, the United Nations Secretariat, through its Division for Ocean Affairs and the Law of the Sea, acts as the Liaison Office for the Registry of the Tribunal.

14. The 1982 Convention also established the International Seabed Authority, with its seat in Jamaica (article 156). The Secretariat of the Authority (articles 166-169) renders the secretariat services to the principal and subsidiary organs of the Authority.

15. By its resolution 48/263 of 17 August 1994, the General Assembly decided that the administrative expenses of the International Seabed Authority shall be funded by the United Nations for a period until the end of the year following the

⁶ Ibid., para. 20.

⁷ Ibid., para. 46.

⁸ General Assembly resolution 49/28, para. 11.

⁹ General Assembly resolution 52/251, annex.

year during which the Agreement relating to the implementation of Part XI of the 1982 Convention on the Law of the Sea enters into force. Thereafter, the administrative expenses of the Authority shall be met by assessed contributions of its members.¹⁰

16. The General Assembly, in its resolution 50/23 of 5 December 1995, approved that the provision by the Secretary-General of the United Nations of such services as might be required for the servicing of the two meetings of the Authority to be held in 1996 and also approved a request to allow the staff and facilities previously available to the Kingston Office for the Law of the Sea to become an interim secretariat of the Authority. The Assembly further authorized the Secretary-General to administer the interim secretariat until the Secretary-General of the Authority was able to assume effectively the responsibilities of the Authority secretariat.

17. In March 1997, an Agreement was concluded concerning the Relationship between the United Nations and the International Seabed Authority.¹¹ In accordance with article 12 of the Agreement, conference-servicing assistance to the Authority continues to be provided by the United Nations Secretariat.

18. The current staffing table of the United Nations Division for Ocean Affairs and the Law of the Sea is set out in annex I to the present paper, for illustration and reference purposes.

B. Institutional linkage between the United Nations Secretariat and the secretariat of the 1992 United Nations Framework Convention on Climate Change

19. The 1992 United Nations Framework Convention on Climate Change established a number of organs, including the Conference of the Parties (article 7) as the supreme body and a Secretariat (article 8) as an executive body of the Convention. None of these bodies is de jure a United Nations subsidiary organ. The functions of the Convention secretariat under article 8 (2) are the following:

(a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;

(b) To compile and transmit reports submitted to it;

(c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference of the Parties;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(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;

¹⁰ General Assembly resolution 48/263, annex, sect. 1, para. 14.

¹¹ General Assembly resolution 52/27, annex.

(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.

20. The Convention provides that “the Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning” (article 8 (3)). In accordance with article 21 on interim arrangements, the secretariat functions referred to in article 8 of the Convention were carried on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties. In paragraph 12 of resolution 45/212, the Assembly had requested “the Secretary-General of the United Nations, in consultation with the Executive Director of the United Nations Environment Programme and the Secretary-General of the World Meteorological Organization, as well as with the executive heads of the United Nations bodies with expertise in the field of development, to establish as soon as possible at Geneva an ad hoc secretariat of appropriate size and quality, consisting mainly of Professional staff of the United Nations Environment Programme and the World Meteorological Organization, taking into account the need to ensure that the work programmes of those two organizations are not negatively affected, to be coordinated by those two organizations in consultation and cooperation with the head of the ad hoc secretariat and supplemented by staff from other bodies of the United Nations system, as appropriate, in order to ensure that the ad hoc secretariat embodies the requisite technical expertise”.

21. In 1995, the Conference of the Parties at its first session and the General Assembly at its fiftieth session endorsed, in reciprocal decisions, the institutional linkage of the Convention secretariat to the United Nations.

22. Namely, at the 10th plenary meeting of its first session, on 7 April 1995, the Conference of the Parties adopted decision 14/CP.1 by which, inter alia, it 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”. The Conference also took note of and accepted “the arrangements proposed by the Secretary-General of the United Nations for administrative support to the Convention secretariat”. For its part, the General Assembly, on 20 December 1995, adopted resolution 50/115, in which it endorsed “the institutional linkage between the Convention secretariat and the United Nations, as advised by the Secretary-General and adopted by the Conference of the Parties”.

23. The arrangements were outlined in a note by the Secretary-General dated 14 November 1995.¹² In particular, it was pointed out in the note that an institutional arrangement for the Convention secretariat should respect the distinct character of the Convention and provide for the autonomy, responsiveness and accountability of its secretariat and that, at the same time, it would be advisable to place the secretariat on a sound and supportive framework of administrative regulations, rules and procedures that would satisfy the expectations of the parties with respect to the effective management of the resources that they contributed. For these reasons the Secretary-General advised that the Convention secretariat should be institutionally

¹² See A/AC.237/79/Add.1, annex III (copy available on file). On 14 November 1994, the Special Adviser to the Secretary-General forwarded the note to the Chairman of the Intergovernmental Negotiating Committee for a framework convention on climate change.

linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme of the Organization.

24. Under the established arrangements, the Executive Secretary of the Convention secretariat is fully responsible and accountable to the Conference of the Parties for all aspects of the implementation of activities mandated by the Conference of the Parties within the limits of its budgetary resources. In this connection, the Executive Secretary of the Convention secretariat is responsible for the proper utilization of funds and is accountable to the Conference of the Parties for the expenditures incurred on behalf of the Conference in accordance with the budgetary decisions taken by the Conference. In addition, the Executive Secretary is responsible for the structural organization of the Convention secretariat. The Executive Secretary of the secretariat was furthermore delegated the authority for the recruitment of staff for services limited to the Secretariat, for their promotion and for the termination of such service.

25. At the same time, the institutional linkage arrangements are clearly understood to mean that the Convention secretariat is composed of staff members of the United Nations who are covered by the same conditions of service as the rest of the United Nations staff. Under these arrangements, the Executive Secretary is also a staff member of the United Nations. The Executive Secretary reports to the Secretary-General on administrative matters through the Under-Secretary-General for Management, and on other matters through the Under-Secretary-General for Economic and Social Affairs. It is the duty of the Executive Secretary of the Convention secretariat to ensure that this unit is administered in strict conformity with the provisions of the United Nations Staff Regulations and Rules as well as administrative instructions issued in the furtherance thereof by the Secretary-General. In the latter respect, the head of the Secretariat is fully responsible to the Secretary-General as the chief administrative officer of the United Nations. In order not to undermine the relevant authority of the Secretary-General, the head of the Convention Secretariat was appointed by the Secretary-General following consultations with the Conference of the Parties through its Bureau.¹³

26. In 1999, the General Assembly reviewed the functioning of the institutional linkage and, in its resolution 54/222 of 22 December 1999, approved its continuation subject to further review not later than 31 December 2001.¹⁴

27. Pursuant to that resolution, the Secretary-General, in a report dated 18 September 2001, provided an update and overall review of the institutional linkage of the Convention secretariat to the United Nations. Among other matters, it was observed in that report that, as regards administrative matters, the Executive Secretary has functioned within the scope of a broad delegation of authority, which, over the years, has adapted to changing circumstances and has resulted in a steadily greater assumption of administrative responsibility by the Convention secretariat. In

¹³ In its decision 14/CP.1 of 7 April 1995, the Conference of the Parties requested the Secretary-General to appoint, after consultation with the Conference of the Parties through its Bureau, the first head of the Convention Secretariat, with the title of Executive Secretary at the level of Assistant Secretary-General for a three-year period starting on 1 January 1996. The decision was reviewed by the Conference of the Parties at its third session, at which it approved the post of the Executive Secretary at the level of Assistant Secretary-General (decision 15/CP.3 of 11 December 1997).

¹⁴ General Assembly resolution 54/222, para. 4.

consultation with the United Nations, a progressively larger portion of the administrative support charges levied for the reimbursement of administrative servicing costs has been re-allotted to the Convention secretariat. The Executive Secretary, in agreement with the Department of Management, has gradually taken over most of the responsibility for financial and personnel administration of the Convention secretariat. A substantial portion of the support costs are currently re-allotted back to the secretariat by way of financing specific posts or other administrative requirements of the secretariat. The remainder covers the cost of providing audit, payroll, investment, treasury and accounting services by the United Nations Office at Geneva. Further adjustments to this pattern are being considered, as necessary, as the Convention secretariat seeks to ensure self-sufficiency in administrative matters. The report concludes that the administrative arrangements, as they have developed, have provided and continue to provide a sound basis for the day-to-day functioning of the Convention secretariat. These arrangements clearly define the accountability of the Executive Director to the Conference of the Parties and to the Secretary-General and, at the same time, delineate the responsibility of the United Nations for providing the necessary support services as well as advice to the Executive Secretary when requested.

28. The General Assembly, by its resolution 56/199 of 21 December 2001, approved the continuation of the institutional linkage of the Convention secretariat and related administrative arrangements for a further five-year period, and requested the Secretary-General to review the functioning of that linkage not later than 31 December 2006.

29. The headquarters of the Climate Change Convention secretariat are located on the United Nations premises in Bonn provided by the German Government for the United Nations Volunteers Programme. For that purpose, a tripartite Agreement was concluded in 1996 among the United Nations, the Government of Germany and the Convention secretariat.¹⁵

30. The programme budget structure and core staffing table for the United Nations Framework Convention on Climate Change secretariat for the biennium 2002-2003 is contained in document FCCC/SBI/2001/17/Add.1. For illustration and reference purposes, it is reproduced in table 1 of annex II to the present paper.

C. Administrative support provided by the United Nations Environment Programme to the secretariat of the 1992 Convention on Biological Diversity

31. The 1992 Convention on Biological Diversity established organs similar to those under the Climate Change Convention, namely the Conference of the Parties and the secretariat. Article 24 of the Convention provides that the functions of the secretariat 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;

¹⁵ Copy available on file.

(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;

(e) To perform such other functions as may be determined by the Conference of the Parties.

32. In line with article 24 (2) of the Convention,¹⁶ the Conference of the Parties at its first meeting adopted decision I/4 (1994), by which it designated UNEP to carry out the functions of the Convention secretariat. The Governing Council of UNEP, at its eighteenth session, held at Nairobi in May 1995, adopted decision 18/36, in which it took note of decision I/4 and welcomed the designation of UNEP to carry out the functions of the Convention secretariat, noting that that ensured the latter's autonomy to discharge the functions referred in article 24 of the Convention.¹⁷

¹⁶ Article 24, paragraph 2, provides that "[a]t its first ordinary meeting, the Conference of the Parties shall designate the secretariat from among those existing competent international organizations which have signified their willingness to carry out the secretariat functions under this Convention". According to article 23, paragraph 1, the first meeting of the Conference of the Parties shall be convened by the Executive Director of UNEP not later than one year after the entry into force of the Convention.

¹⁷ In addition to providing support and the secretariat services to the secretariat of the Convention on Biological Diversity, UNEP administers largely on the similar terms the secretariats — non-United Nations executive treaty organs — of the following five global conventions and 13 regional instruments, based in various cities:

A. Global conventions

- Convention on International Trade in Endangered Species of Wild Fauna and Flora (Geneva);
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn);
- Vienna Convention for the Protection of the Ozone Layer (Nairobi);
- Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal);
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Geneva);

B. Regional instruments

- Convention for the Protection of the Mediterranean Sea against Pollution (Athens);
- Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft;
- Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency;
- Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources;
- Protocol concerning Mediterranean Specially Protected Areas;
- Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region (Nairobi);
- Protocol concerning Cooperation in Combating Pollution in Cases of Emergency;
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Kingston, Jamaica);
- Protocol concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region;
- Protocol concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region;
- Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region (Nairobi);
- Protocol concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region;
- Protocol concerning Cooperation in Combating Marine Pollution in Cases of Emergency in the Eastern African Region.

33. At its third session, in 1997, the Conference of the Parties, in its decision III/23, invited the Executive Director of UNEP and the Executive Secretary of the Convention to develop procedures with respect to the functioning of the Permanent Secretariat of the Convention. Pursuant to that decision, UNEP and the Biodiversity Convention secretariat established the personnel, financial and common services arrangements for administrative support to the Convention secretariat and defined the lines of responsibility of all concerned. According to the understanding worked out between UNEP and the Convention secretariat, the United Nations Staff Regulations and Rules, the Financial Regulations and Rules of the United Nations as well as the General Procedures Governing the Operation of the Fund of UNEP, as applicable, shall govern the personnel, financial and common services arrangements, which should be consistent with the financial procedures adopted by the Conference of the Parties. The Executive Secretary of the secretariat of the Biological Diversity Convention is to be appointed by the Executive Director of UNEP, in consultation with the Bureau of the Conference of the Parties. On administrative and financial issues, the Executive Secretary reports to the Executive Director of UNEP. The staff of the Convention secretariat are recruited under the Staff Regulations and Rules of the United Nations. Contracts are offered by UNEP for service in the Convention secretariat only, and their duration is subject to the availability of resources in the trust funds established for the Convention secretariat.¹⁸ Posts and their levels in the Convention secretariat are established by the Conference of the Parties for classification and recruitment purposes, but in conformity with the principles laid down by the General Assembly of the United Nations. UNEP and the United Nations Secretariat, as appropriate, facilitate the provision of conference services to the Conference of the Parties and its subsidiary bodies.

34. The secretariat of the Convention on Biological Diversity is located in Montreal. The legal status of the premises of the secretariat as well as the privileges and immunities of the representatives of Parties to the Convention attending the meetings of the Conference of the Parties in Canada are regulated in the Agreement between the Government of Canada and the secretariat of the Convention on Biological Diversity concerning the headquarters of the latter, concluded in October 1996.¹⁹

35. The programme structure and core staffing of the Biodiversity Convention secretariat for the biennium 2001-2002 is contained in document UNEP/CBD/COP/5/18. For illustration and reference purposes, it is reproduced in table 1 of annex III to the present paper.

D. Institutional linkage between the United Nations and the Permanent Secretariat under the 1994 Convention to Combat Desertification

36. The 1994 United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa also established similar non-United Nations treaty organs to those under the Climate Change and the Biological Diversity conventions. Article 23 (2) of the Desertification Convention provides for a Permanent Secretariat with the following functions:

¹⁸ All contributions to the Convention are deposited to the UNEP Trust Fund account.

¹⁹ Copy available on file.

- (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
- (b) To compile and transmit reports submitted to it;
- (c) To facilitate assistance to affected developing country Parties, on request, particularly those in Africa, in the compilation and communication of information required under the Convention;
- (d) To coordinate its activities with the secretariats of other relevant international bodies and conventions;
- (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;
- (f) To prepare reports on the execution of its functions under this Convention and present them to the Conference of the Parties; and
- (g) To perform such other secretariat functions as may be determined by the Conference of the Parties.

37. Like the Climate Change and the Biological Diversity conventions, the Desertification Convention envisages the designation of a permanent secretariat at the first session of the Conference of the Parties (article 23 (3)). Pursuant to article 22(4), the first session was convened by the interim secretariat in accordance with the interim arrangements specified in article 35. The latter stipulates that “[t]he secretariat functions referred to in article 23 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 47/188 of 22 December 1992, until the completion of the first session of the Conference of the Parties”.

38. In paragraph 7 of resolution 47/188, the General Assembly had requested the Secretary-General to establish at Geneva as soon as possible an ad hoc secretariat of appropriate size and calibre, drawing, inter alia, on staff resources of the United Nations system, in order to ensure that the ad hoc secretariat embodied the requisite technical expertise to assist the Intergovernmental Negotiating Committee in the fulfilment of its mandate.²⁰ In paragraph 9, the Assembly decided that “the Secretary-General shall appoint as head of the ad hoc secretariat a senior official at an appropriate level who shall act under the guidance of the Intergovernmental Negotiating Committee”.

39. The General Assembly, in its resolution 51/180 of 16 December 1996, decided that the first session of the Conference of the Parties to the Desertification Convention and the meetings of its subsidiary bodies should be included in the calendar of conferences and meetings for 1997-1998. It also requested the Secretary-General, subject to the decision of the Conference of the Parties at its first session, to consider:

- (a) Authorizing the secretariat established pursuant to resolution 47/188 to act as secretariat for the transition period following the first session of the Conference of the Parties until the permanent secretariat designated by the

²⁰ The mandate of the Intergovernmental Negotiating Committee was specified by the General Assembly in paragraph 2 of resolution 47/188, namely to elaborate and finalize by June 1994 an international convention to combat desertification.

Conference of the Parties began operating, which should not be later than 31 December 1998;

(b) Maintaining the arrangements within the current programme budget for the interim secretariat to support the Convention beyond the first session of the Conference of the Parties until the permanent secretariat designated by the Conference of the Parties began operating, which should not be later than 31 December 1998, and maintaining the arrangements relating to extrabudgetary funds.

40. In 1996, the interim secretariat received expressions of interest in providing administrative support to the Permanent Secretariat from the United Nations Development Programme, UNEP, the World Meteorological Organization and the Secretary-General of the United Nations. At its first session (October 1997), the Conference of the Parties to the Desertification Convention decided to accept the offer of the Secretary-General for the United Nations to provide the administrative and support arrangements for the Convention secretariat.²¹ These arrangements were largely parallel to those for the secretariat of the Climate Change Convention.²² In particular, the Secretary-General advised that “the Permanent Secretariat should be institutionally linked to the United Nations, while not being fully integrated in the work programme or management structure of any particular department or programme. The general principles of this linkage, and its implications for the United Nations, could be recorded in reciprocal decisions of the Conference of the Parties and the General Assembly. Subject to General Assembly approval, the United Nations is prepared to provide administrative and other support on a reimbursable basis ... along the same lines as that provided to the United Nations Framework Convention on Climate Change as of 1 January 1996”.²³

41. The General Assembly, by its resolution 52/198 of 18 December 1997, approved the institutional linkage between the secretariat of the Convention to Combat Desertification and the United Nations and requested the Secretary-General to authorize the interim secretariat established pursuant to resolution 47/188 to act as the secretariat for the transition period following the first session of the Conference of the Parties.

42. Following the conclusion of a headquarters agreement between the United Nations, the Desertification Convention secretariat and the Government of Germany in August 1998,²⁴ the Convention secretariat was relocated from Geneva to Bonn²⁵ at the end of January 1999 and began functioning as the Permanent Secretariat of the 1994 Desertification Convention.

43. The programme structure and core staffing for the biennium 2000-2001 of the Permanent Secretariat of the Convention to Combat Desertification is contained in document ICCD/COP (3)/2. For illustration and reference purposes, it is reproduced in table 1 of annex IV to the present paper.

44. In view of the above arrangements, the treaty bodies of the Climate Change Convention, the Biological Diversity Convention and the Desertification Convention are administratively and financially independent of the United Nations. They have

²¹ Decision 3/COP.1.

²² For details, see documents A/AC.241/44 and A/AC.241/55 (available on file).

²³ A/AC.241/44, para. 6.

²⁴ The 1998 Headquarters Agreement is available on file.

²⁵ The secretariat of the Convention to Combat Desertification, like the Climate Change Convention secretariat, is located on the United Nations premises in Bonn.

their own governing bodies, scales of assessment and budgets. The activities of those bodies as well as the salaries and emoluments of United Nations officials servicing them are not funded from the regular budget of the United Nations. This principle also applies to services, such as conference servicing, which may be provided by the United Nations to those treaty bodies; more specifically, such services are provided on a reimbursable basis.

45. In addition to the examples discussed in this section, it may be noted that the United Nations Secretariat provided services (interpretation, circulation of documentation, etc.) to meetings of certain other non-United Nations bodies held at Headquarters in New York, including the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, the Inter-Parliamentary Union, the European Union, the Commonwealth Secretariat, the Holy See, the Socialist International, Lions Clubs International, the International Organization of la Francophonie, etc. United Nations staff serviced those meetings on a reimbursable basis as well. Furthermore, on occasions in the past, non-United Nations bodies requiring interpretation would be given the names of freelance interpreters whom they would then recruit on their own.

46. The United Nations also provides the necessary staff and facilities to treaty organs in the field of the protection of human rights. The practice of the Organization in this area as regards, for example, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the Committee against Torture was discussed by the International Law Commission at its forty-sixth session in 1994.²⁶

III. An independent secretariat within the ICC system

47. An independent secretariat for the Assembly of States Parties could be staffed with United Nations officials and institutionally linked to the United Nations. Alternatively, it could be entirely independent of the Organization and staffed with non-United Nations officials.²⁷

A. Independent Assembly secretariat within the ICC system institutionally linked to the United Nations and staffed with United Nations officials

48. In case it is decided that such an independent secretariat of the Assembly of States Parties should be staffed with United Nations officials, it could be institutionally linked to the United Nations through reciprocal decisions by the General Assembly and the Assembly of States Parties outlining the nature, scope and duration of such a linkage.²⁸ The existing precedents of the Climate Change

²⁶ For more details see: *Yearbook of the International Law Commission, 1994*, vol. II, Part Two, paras. 17-20.

²⁷ Under either scenario, it would seem advisable to locate the secretariat of the Assembly of States Parties at the seat of the Court.

²⁸ To enable the United Nations to carry out its services and facilities under the ICC/United Nations Relationship Agreement, a future headquarters agreement between the Court and the Kingdom of the Netherlands should embody the relevant provisions.

Convention and the Desertification Convention secretariats described in section II, B and D above, could be considered as models.

B. Independent Assembly secretariat within the ICC system staffed with non-United Nations officials

49. In case a secretariat of the Assembly of States Parties is established as an independent entity within the ICC system, but managed by and staffed with non-United Nations officials, the assistance of the Organization, in view of the future ICC/United Nations Relationship Agreement (should the text be kept as it currently stands), could be limited to mostly translation, interpretation, documentation and other relevant conference and support services for the Assembly on the understanding that the substantive work, such as the preparation of reports, compilation and communication of information and documentation and the like, would be done by the Assembly secretariat itself.

50. This distribution of tasks and functions, apparently, could allow for a smaller number of Professional and General Service staff to be recruited to carry out the substantive functions for the Assembly.²⁹ Accordingly, it could be assumed that the size of such a secretariat might be comparable to or slightly above that, for example, of the United Nations Division for Ocean Affairs and the Law of the Sea (see annex I to the present paper). In the latter eventuality, because of its autonomous and independent character, the Assembly secretariat could include an additional unit dealing with administrative and personnel matters.

²⁹ Were the staff of the secretariat of the Assembly of States Parties to be composed of United Nations officials, they would enjoy the privileges and immunities under the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations. Article 12 of the draft ICC/United Nations Relationship Agreement regarding the issuance of the United Nations laissez-passer to officials and staff of the Court does not, as currently drafted, cover non-United Nations staff of the Assembly secretariat.

Annex I

Division for Ocean Affairs and the Law of the Sea — staffing table

A. Professional category and above	
D-2 ^a	1
D-1	2
P-5	4
P-4	3
P-3	4
P-2	4
Total A	18
B. General Service	
G-6	2
G-5	6
G-4	2
G-3	2
Total B	12
Grand Total (A+B)	30

^a The Director of the Division reports to the Legal Counsel of the United Nations.

Table 2^a**Programme budget staffing table for the biennium 2002-2003**

	2002	2003
A. Professional category and above		
Executive Secretary	1	1
D-2	3	3(+1) ^b
D-1	6	6
P-5	8	8
P-4	16(+1) ^b	17(+1) ^b
P-3	25	25
P-2	9	9
Subtotal (A)	69	71
B. General Service category	38.5	38.5(+1) ^b
Total (A+B)	106.5(+1)^b	107(+3)^b

^a This staffing table of the UNFCCC Secretariat is taken from document FCCC/SBI/2001/17.

^b Contingency posts for the CDM “prompt start”.

Table 2
Staffing requirements from the core budget^a

	2000	2001	2002
A. Professional category			
D-2	1	1	1
D-1	3	3	3
P-5	1	3	3
P-4	10	15	15
P-3	9	13	13
P-2	3	2	2
Total Professional category	27	37	37
B. Total General Service category	20	27	27
Total (A+B)	47	64	64

^a These staffing requirements were taken from document UNEP/CBD/COP/5/18.

Table 2
Post requirements 2000-2001^a

	2000	2001
A. Professional category and above		
Assistant Secretary-General	1	1
D-2	1	1
D-1	1	1
P-5	6	6
P-4	5	8
P-3	8	8
P-2	3	4
Subtotal (A)	25	29
B. General Service category	13	15
Total (A+B)	38	44

^a These post requirements are taken from document ICCD/COP(3)/2.