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**PARTICIPATION IN THE UNITED NATIONS SYSTEM'S COORDINATION
MECHANISMS**

Addendum 1

Note by the Secretary-General

In this report, the Secretary-General transmits to the Executive Council a note by the Legal Adviser on the action taken by the United Nations concerning the ratification by the States of the Convention on the Privileges and Immunities of the Specialized Agencies and the annex relating to the UNWTO.

**PARTICIPATION IN THE UNITED NATIONS SYSTEM'S COORDINATION
MECHANISMS**

Addendum 1

**Ratification of the Convention on the Privileges and Immunities of the
Specialized Agencies and accession to the annex relating to the UNWTO**

Note by the Legal Adviser

1. At its last session (Jeju, Republic of Korea, June 2008), the Executive Council, through decision 9 (LXXXVIII), gave final approval to the text of the Annex to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, in accordance with the authorization that had been given to it through resolution 545 (XVII) adopted by the General Assembly at its session in November 2007 in Cartagena de Indias, Colombia. It has thus come into force and the Member States are called upon to approve it and to provide notice of their approval to the Secretary-General of the United Nations.
2. This entry into force coincides with an action undertaken by the United Nations to encourage States that have not yet done so to ratify this important Convention and those that have done so to extend its applicability by acceding to new annexes relating to other specialized agencies. A Note issued by the Office of the Legal Counsel of the United Nations indicates the reasons for and the details of this action; such document is attached to the present note.
3. Given the importance of having the broadest possible accession to the Convention and its annex, the Executive Council will undoubtedly consider it useful to join this campaign. To this end, it could entrust the Secretary-General with implementing a strategy aimed at encouraging the Member States to proceed as soon as possible with such accession¹.
4. Such action could include, for example:
 - the preparation of model forms;
 - sending personalized letters to the Member States – according to their situation with regard to the Convention – explaining the interest of ratifying it or of proceeding with accession to the Annex relating to the UNWTO; and
 - the creation of a special page on the UNWTO website devoted to this matter.

¹ The Secretary-General and the Legal Adviser could, for this purpose, take inspiration from the action carried out at the ILO (see: http://www.ilo.org/public/english/bureau/leg/stat_oit.htm)

ANNEX

NOTE FROM THE OFFICE OF THE LEGAL COUNSEL OF THE UNITED NATIONS



UNITED NATIONS SYSTEM

CEB

**Chief Executives Board
for Coordination**

CEB/2008/HLCM/XVI/INF.4/Rev.1

18 September 2008

HIGH-LEVEL COMMITTEE ON MANAGEMENT (HLCM)

Sixteenth Session

United Nations Secretariat

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Agenda item 8B

**1947 Convention on the Privileges and Immunities
of the Specialized Agencies**

The Legal Network wishes to bring the following to the attention of the High-Level Committee on Management (HLCM) and, in due course, the Chief Executives Board for Coordination (CEB):

(i) Limited participation in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (“the Convention”)

1. At the moment there are 116 State Parties to the Convention, i.e., approximately one-third of the Specialized Agencies’ membership is not bound by the Convention;
2. Six accession cases are currently pending within the UN Office of Legal Affairs, which performs the depositary functions on behalf of the Secretary-General for the Convention;
3. In two of these cases, States that submitted an instrument of accession have not become party to the Convention due to unacceptable reservations;¹
4. In the other four cases, the instruments of accession submitted by States failed to specify any Specialized Agency to which it applied the Convention or failed to be signed by the proper authority;
5. The steps undertaken by the Depositary upon receipt of these instruments to remedy the situation have not led to satisfactory results;
6. The Legal Network (Legal Advisers’ sub-Network) wishes to inform the HLCM and, in due course, the CEB, of the overall limited participation in the Convention and the difficulties encountered by the Secretary-General, as Depositary to remedy the situation in the few pending cases. The Legal Network (Legal Advisers’ sub-Network) would also like to bring the following to the attention of the HLCM and, in due course, the CEB:

¹ Given the purpose of the Convention and the Specialized Agencies’ direct interest in any proposal made by an acceding State to alter in any way the terms of the 1947 Convention by means of reservation(s), the Secretary-General, as Depositary of the Convention, is required, consistent in part with a statement of principles issued in May 1953 by the Administrative Committee on Coordination (ACC), to consult the Executive Heads of the Specialized Agencies before accepting the instrument. Such State will not become a Party to the Convention until it is clear that the Specialized Agencies do not object to the accompanying reservations.

(ii) Initiatives to encourage participation in the Convention, including a common action plan

7. In follow-up to the conclusions reached during the 2007 Meeting of Legal Advisers, the Treaty Section of the UN Office of Legal Affairs is featuring the Convention in the 2008 Treaty Event held during the high-level segment of the General Assembly, from 23 to 25 September and 29 September to 1 October;

8. Where appropriate, the UN Treaty Section will also draw attention to the Convention in its Headquarters and Regional Training Seminars;

9. Some Specialized Agencies, such as ILO and ITU, have already provided their governing bodies with status reports on the situation of privileges and immunities in their member States, renewing the invitation to accede to the Convention to those that are not yet party;² other Specialized Agencies (e.g., WHO) intend to follow this approach in the near future;

10. ILO, who is in the lead on this subject, has also implemented a preliminary strategy including:

- (a) Preparing material, such as model instruments of accession, has been developed in the necessary languages to respond to information requests;
- (b) Liaising with its field locations on the subject, to ensure proper briefing of headquarters units undertaking field missions; and
- (c) Collecting examples showing where it has experienced difficulties in relation to privileges and immunities;

² The ILO's Governing Body, during its March 2008 Session, has requested that the ILO Director-General:

"... (a) renew the invitation, on its behalf, to concerned member States to accede to the Convention on the Privileges and Immunities of the Specialized Agencies and apply Annex I relating to the ILO in the very near future; (b) continue to report periodically on the situation of privileges and immunities in the member States and, in particular, in the context of DWCPs, the "Delivering as One" UN pilot countries and the field structure review; and (c) consider further measures to address, from the perspective of risk assessment and risk reduction, the lack of recognition of privileges and immunities in those member States that were not yet a party to the Convention on the Privileges and Immunities of the Specialized Agencies or had not applied Annex I relating to the ILO." (GB/301/11 (Rev.) and GB/301/LILS/1).

As early as in 1990, the ITU Council adopted a resolution (Resolution 1004) inviting all member States of the Union that were not Party to the Convention to take the necessary steps to do so at the earliest possible date. Resolution 1004 also asked the Secretary-General to report any practical difficulty s/he might encounter at the implementation stage of the Convention to the Council.

11. Members of the Legal Advisers sub-Network are in the process of elaborating a common action plan and propose:

- (a) Supporting the efforts undertaken by the Secretary-General as Depositary of the Convention or by other Specialized Agencies: for example, ILO Field Directors were provided with a copy of the UN Secretary-General's invitation and information relating to the 2008 Treaty Event, sent to Governments in March. Consequently, the topic has been raised with Government counterparts wherever possible;
 - (b) Focusing concerted attention on specific member States: e.g., member States that are Party to the Convention on the Privileges and Immunities of the United Nations, but not to the Convention on the Privileges and Immunities of the Specialized Agencies; that have submitted an instrument of accession which cannot be deposited (see above-mentioned pending cases); that are "Delivering as One" UN pilot countries (of the eight pilot countries, Cape Verde, Mozambique and Viet Nam have yet to accede to the Convention); that have higher security phases which increase security related risks; that host a higher proportion of Specialized Agencies or have large technical cooperation activities. Those member States could each benefit from a focused concerted attention on the part of Specialized Agencies;
 - (c) Awareness-raising: This could be done both internally (through status reports to the Specialized Agencies' respective executive bodies) and externally (through field personnel with respective governments). Additional steps could be taken through the preparation of information packages and field missions;
 - (d) Providing access to consolidated information: To allow UN officials to have, at a glance, an overview of the applicable legal framework in a given member State³ in an up-to-date format, at any time, including from field duty stations;
- (iii) **Adjustments to the Depositary Practice where instruments of accession to the Convention are accompanied by reservations**

12. The Secretary-General bases its depositary practice with respect to reservations to the Convention in part on a statement of principles issued in 1953 by the Administrative Committee on Coordination ("the ACC Statement", copy attached for reference);

13. Members of the Legal Network (Legal Advisers' sub-Network), including the UN Office of Legal Affairs have undertaken an analysis of the depositary practice as described in the ACC Statement with a view to suggesting necessary adjustments, taking into account the governance structure of the CEB, the establishment of the Legal Network and the aim of increasing participation in the Convention;

³ ILO has created a public website providing a clear overview of the legal basis for privileges and immunities in any particular member State (http://www.ilo.org/public/english/bureau/leg/stat_oit.htm); WHO has issued "*Basic Documents Forty Fifth Edition (2005)*", a publication indicating which of its member States are Party to the Convention. Consolidating information allows officials to know, at a glance, what the situation is in any particular member State. It can also serve to highlight regional or historical differences that could assist in determining priorities (e.g., that none of the former Portuguese colonies in Africa - Angola, Cape Verde, Guinea Bissau, Mozambique, and Sao Tome & Principe - are Party to the Convention).

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(iv) Addressing disparities between UN entities' application of the Convention

14. The 1947 Convention provides a minimum coherent and transparent legal regime for the Specialized Agencies that replicates the regime under the 1946 Convention on the Privileges and Immunities of the United Nations ("the 1946 Convention"). Where member States are not Party to the 1946 or the 1947 Conventions, the organizations concerned must negotiate bilateral agreements with governments. In addition to creating an administrative burden, this inevitably leads to disparities in the status granted to the United Nations, the Specialized Agencies and their officials in the same duty station. Where member States are Party to one or both of these Conventions, similar disparities also arise from the manner in which they are implemented;

15. Information on where the widest disparities exist could assist in setting common priorities;

16. In practical terms, at this stage, information relating to the disparities in the application of the 1947 Convention between the Specialized Agencies could be consolidated centrally with a view to ensuring that equivalent facilities, privileges and immunities afforded to any particular Specialized Agency and their respective officials are provided across the board. This would also assist in ensuring that the "most favoured treatment" to one is provided equally to all (e.g., the ILO is currently reviewing the situation vis-à-vis other Specialized Agencies in the case of a specific member State that is creating real and perceived differences between officials of sister Agencies). Further elements can be drawn from the Joint Inspection Unit's (JIU) examination and its recommendations;⁴

17. The Legal Advisers Network will continue to review the issues raised in this paper and inform the HLCM, in due course, on further developments.

⁴ JIU/REP/2006/4, *A second review of the implementation of headquarters agreements concluded by UN system organizations: Provisions of HQ premises and other facilities by host countries* (Geneva, 2006).