



Sixteenth session
Dakar, Senegal, 28 November - 2 December 2005
Provisional agenda item 10 (b)

COOPERATION WITH THE UNITED NATIONS SYSTEM

**(b) Acceptance of the Convention on the Privileges and Immunities of the
Specialized Agencies**

Note by the Secretary-General

The Secretary-General submits to the General Assembly the Note by the Legal Adviser concerning the acceptance of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations.

COOPERATION WITH THE UNITED NATIONS SYSTEM

(b) Acceptance of the Convention on the Privileges and Immunities of the Specialized Agencies

Note by the Legal Adviser

1. The conversion of the WTO into a specialized agency of the United Nations opens the way for the application to the organization of the Convention of 21 November 1947 on the Privileges and Immunities of the Specialized Agencies of the United Nations, whose text is provided in the annex of the addendum to the present document.
2. Through its decision CE/DEC/13(LXXIII), the Executive Council deemed "that it is in the interest to WTO to extend the application of the Convention to the Organization, in accordance with the modalities described in document CE/73/6(c). The Note by the Legal Adviser is also reproduced in the addendum to the present document.
3. In accordance with the request of the Executive Council, the Secretary-General, in cooperation with the Legal Adviser, transmitted to the Assistant Secretary-General and Legal Counsel of the United Nations, a draft Annex to the Convention aimed at completing the standard clauses of the Convention and adapting them in a manner that takes into account the specific characteristics of the WTO and of the attributions assigned to it by its Statutes.
4. Following several exchanges of views, the United Nations Office of Legal Affairs and the Legal Adviser of WTO agreed on the draft Annex attached herewith (*Annex 1*¹), which it is up to the General Assembly to approve so that the Legal Counsel of the United Nations can submit its text to the United Nations Economic and Social Council. Only once the Economic and Social Council has formally recommended the adoption of the text can the WTO definitively approve it, and only then will the Convention become applicable to the Organization.
5. Given that the Economic Council of the United Nations will not be meeting until January 2006, this ponderous procedure precludes the approval of the Convention by the General Assembly during the present session. Nevertheless, in accordance with the provisions of paragraphs (l) and (m) of Article 12 of the Statutes, the General Assembly may delegate its powers with regard to the conclusion of international agreements.
6. So as to not unduly delay the coming into force of the Convention vis-à-vis the WTO, it is thus proposed that the Assembly:
 - i/ entrust the Secretary-General with proceeding with the necessary formalities for the definitive approval of the standard clauses of the Convention and of this Annex, in cooperation with the Legal Adviser of the Organization;
 - ii/ request the Executive Council to authorize the Secretary-General on its behalf to definitively approve the text of the Annex after its formal adoption by the Economic and Social Council of the United Nations;
 - iii/ request the Secretary-General to report to it regarding the completion of these formalities at its next session.

¹ *Annex 2* reproduces the text of the Explanatory Note prepared by the Legal Counsel of the United Nations.

25 October 2005

A N N E X 1**Annex****World Tourism Organization**

In their application to the World Tourism Organization (hereinafter referred to as "the Organization"), the standard clauses shall operate subject to the following modifications:

1 Article V and Section 25, paragraphs 1 and 2 (I) of Article VII of the Convention shall extend to the representatives of Associate Members participating in the work of the Organization in accordance with the Statutes of the World Tourism Organization (hereinafter referred to as "the Statutes").

2. Representatives of Affiliate Members, participating in the activities of the Organization in accordance with the Statutes, as well as the Chairpersons and members of the Strategic Group of the Organization, and of the World Committee on Tourism Ethics shall be granted the following privileges, immunities, and facilities, in order to safeguard the independent exercise of their official functions:

- (a) In respect of words spoken or written and acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer exercising the activities of the Organization;
- (b) Applications for visas, where required and when accompanied by a certificate that they are traveling on the business of the Organization, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel;
- (c) In connection with sub-paragraph (b) above, the principle contained in the last sentence of Section 12 of the standard clauses shall apply;
- (d) Immunity from legal process as referred to in sub-paragraph (a) above is granted to representatives of Affiliates Members, as well as to the Chairpersons and members of the Strategic Group of the Organization and of the Committee on Tourism Ethics in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary-General of the Organization shall have the right and the duty to waive the immunity of any such individual in any case where in his/her opinion the immunity would impede the course of justice, and can be waived without prejudice to the interests of the Organization.

3. Experts, other than officials coming within the scope of Article VI of the Convention, serving on organs and bodies of, or performing missions for, the Organization shall be accorded such privileges and immunities as are necessary for the independent and effective exercise of their functions, including the time spent on journeys in connection with service on organs and bodies or missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or seizure of their personal baggage;
- (b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on organs and bodies of, or employed on mission for, the Organization;
- (c) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization.
- (d) For the purpose of their communications with the Organization, the right to use codes and to receive papers or correspondence by courier or in sealed bags.
- (e) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions.

4. Privileges and immunities are granted to the experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Secretary-General of the Organization shall have the right and the duty to waive the immunity of any expert in any case where, in his/her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

5. The privileges and immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to the Deputy Secretary-General of the Organization, his/her spouse and minor children.

A N N E X 2

Explanatory Note

General remark

1. The proposed Annex is based on the existing Annexes to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (the 1947 Convention) and also takes into account the nuances of the 1946 Convention on the Privileges and Immunities of the United Nations (the 1946 Convention).

Opening clause

2. The opening words have no deviation from most of the Annexes.

Privileges and immunities for representatives of Associate Members

3. Paragraph 1 provides that the representatives of Associate Members shall be granted the privileges and immunities under Articles V and VII of the 1947 Convention, the same privileges and immunities as are to be accorded to the representatives of Full Members of WTO (sovereign States).

Privileges and immunities for representatives of Affiliate Members

4. In accordance with Article 7 (1) of the Statutes of the World Tourism Organization (the Statutes), affiliate membership is open to international bodies, commercial entities and associations. The approach taken in the proposed paragraph 2(a) suggests that the individuals concerned be accorded immunity from legal process for words spoken or written and acts done in the performance of their official functions. In addition, they should be provided facilities for speedy travel (paragraph 2(b)). However, it is suggested that the latter facilities be subjected to the principle stated in the last sentence of Section 12 of the 1947 Convention allowing for the adoption of "appropriate security precautions" by a State party to this Convention by agreement with WTO. The security-related clause could be found in a number of the Annexes with regard to the privileges and immunities accorded to experts performing missions for specialized agencies.

5. In sub-paragraph 2(d), it is suggested that immunity from legal process of the representatives of Affiliate Members can be waived by the Secretary-General of WTO.

Privileges and Immunities for experts on mission for WTO

6. The proposed scope of the privileges and immunities to be accorded to experts performing missions for WTO, in essence, is identical to that found in the existing Annexes as well as Article VI of the 1946 Convention.
7. Most of the Annexes list the specific privileges and immunities for experts and tie them up to the principle of the "effectiveness" in the exercise of their functions. However, the 1946 Convention suggests a slightly different approach. Section 22 thereof first provides for the principle that experts shall be accorded "such privileges and immunities as are necessary for the independent exercise of their functions" followed by enumeration of the specific immunities. Paragraph 3 of the draft Annex is based on the latter approach. It also suggests that the privileges and immunities be accorded to experts not only for the "independent", but also "effective" exercise of their functions (the former principle taken from the 1946 Convention and the latter - from the Annexes).
8. Sub-paragraph 3(a) is identical to the corresponding provision found in most of the existing Annexes. It is to be noted that the proposed immunities from personal arrest and from seizure of personal baggage are lacking the reference to the immunity from "detention", which is included in Section 22(a), Article VI of the 1946 Convention. While it would seem advisable to have the reference to immunity from detention in the current provision in order to avoid a discrepancy in the legal status of UN and Specialized Agencies experts, nevertheless, it has been decided to follow the "standard" formulation found in the Annexes with a view to avoiding possible objections from WTO Member States.
9. Sub-paragraph 3(b) is identical to the corresponding provision contained in most of the existing Annexes.
10. With respect to the provisions in sub-paragraphs 3(c) and (d), it is to be noted that most Annexes combine these in a single clause. The draft Annex proposed for WTO reflects the approach taken in the 1946 Convention whereby inviolability for papers and documents, and the right to use codes and to receive papers or correspondence by courier or in sealed bags are set out in separate paragraphs.
11. Sub-paragraph 3(e) concerning the facilities in respect of currency is identical to most of the Annexes as well as Section 22(e) of the 1946 Convention.
12. Paragraph 4 concerning the right and the duty to waive the immunity of an expert could also be found in a number of Annexes as well as in Section 23 of the 1946 Convention. Most of the Annexes vest this prerogative into a specialized agency whereas the 1946 Convention bestows it to the Secretary-General of the United Nations. The proposed paragraph for WTO follows the latter approach.
13. A number of existing Annexes suggest that the privileges and immunities specified in Section 21 of the 1947 Convention (i.e. the diplomatic privileges and immunities, exemptions and facilities) shall also be granted to certain high-ranking officials below the executive head of a Specialized Agency. Should WTO find it appropriate to include certain categories of high-ranking officials in the proposed paragraph, OLA should be informed accordingly.