

**Ad hoc Working Group on the Secretariat's Legal Capacity (SLC)  
Second Meeting  
Moscow, Russia  
26 February 2010**

<b>Title</b>	Minutes from the SLC 2 Meeting
<b>List of Annexes</b>	Annex 1 – List of participants
<b>Summary / Note</b>	This document presents the most important information and statements presented, as well as, where available, the conclusions and decisions made during the meeting.

### 1. Opening of the meeting

The Meeting was opened by Mr. Evgeny Slastnykh of the hosting country, Russia. Mr. Slastnykh proposed to elect Ms. Carola Beatrice Bjørklund (Norway) as the Chair of the meeting.

The Meeting **agreed** to the above proposal.

### 2. Adoption of the agenda

The Meeting **adopted** the agenda as submitted in document SLC 2/2/1.

### 3. Background

The Chair explained the background of the Secretariat's legal capacity issue. She recalled that the Partners have not decided what format of the Secretariat they would like to have in place. Further, she stressed that the Secretariat must be functional for the purpose of the NDPHS and well fit for the future cooperation within the Partnership. Finally, she invited the participants to present, under the following agenda item, the options to resolve the issue.

### 4. Presentation of different models and 5. Discussion of model

Russia mentioned that there are a few examples of secretariats in the ND area, but these are mostly established on the basis of international banks. Russia believes that the NDPHS Secretariat differs from the other Secretariats in the ND area and should be granted a status of an international organization by means of concluding a legally binding international agreement. However, Russia holds an opinion that privileges and immunities of the NDPHS Secretariat is a separate issue and subject to further discussions.

Finland remarked that the issue of the Secretariat's legal capacity and what format it should take is ultimately a political question. To improve the working conditions of the Secretariat, Finland supports the option of establishing, in accordance with the applicable rules of international law, an international secretariat with its own legal capacity. It further noted that, before any further progress can be made, this option would have to be approved by the Host Country.

Sweden noted that it currently hosts the Secretariat and stated that the legal basis of the Secretariat is a political issue which needs to be further discussed in Sweden internally.

The Chair shared the opinion of Russia and Finland that the Secretariat must have a status of an international organization. It further stated that Norway would not support the concept of an NGO established in Sweden, as this solution would pose many questions, including, e.g., the issue of financing. The Chair also informed that Swedish legal experts hold the view that issues such as taxation and social guarantees are up to the Host Country to decide upon. The Chair invited Sweden to confirm that it is willing to host the Secretariat. Sweden responded affirmatively to this request.

The Chair proposed that it will communicate to Sweden the need for a meeting with Swedish legal experts to discuss different options for the establishment of an international Secretariat and further questions related to among others taxation and social welfare issues.

Finland reiterated that it agrees with the establishment of the legal capacity for the Secretariat as an international organization, but stressed that this solution must be communicated to the CSR. It further stated that the Ministries of Foreign Affairs also have to discuss the matter.

The Chair summarized the opinions: Finland, Norway and Russia agree to authorize to the Secretariat a capacity of an international organization, whereas Sweden will have to communicate her position. The Chair suggested that at least the three countries which support the creation of an international Secretariat would meet in Stockholm with the Swedish colleagues to discuss the issue further. Other Partners would be invited to participate, too. She also noted that it would be desirable to present some progress to the CSR meeting which will take place in April. The Chair also posed a question regarding the involvement of the European Commission in the discussions on Secretariat's legal capacity.

The Secretariat recalled that the European Commission has already informed that they do not consider themselves involved in this issue, although politically they support the establishment of the Secretariat with its own legal capacity. Further, it noted that it would be important that the Chair Country Russia would be able to inform about the progress in the matter when Russia speaks on behalf of the NDPHS during the ND Steering Group meeting on 30 March in Brussels, Belgium.

The Chair invited the Secretariat to contact the European Commission in order to clarify and confirm the latter's position. The Chair further noted that the issue of immunities and privileges of the Secretariat needs to be clarified in particular with the potential Host country, Sweden. Discussion is needed on many legal issues, including staff regulations.

Russia stated that it sees the Partnerships operating within the ND policy from practical, not geopolitical point of view. It considers social benefits, privileges and immunities as a means to be able to function efficiently and in this regard, certain privileges, e.g. diplomatic passports, would be superfluous.

The Chair and Finland agreed with Russia that functionality is the core issue.

Sweden recalled discussions on the conditions of the ECDC privileges and immunities, which have taken place in Sweden, and suggested that it should be explored further if the Secretariat should be granted similar ones.

Finland asked what will happen if other Partners will not support the idea to establish capacity of an international organization for the Secretariat.

The Secretariat noted that Finland has posed a very relevant question because technical details can not be advanced within the Host Country Sweden before it is clear that all Partners agree with the above proposal.

In response to the question posed by Finland the Chair stressed that the discussions have been held for a long time and suggested that Partners who disagree with the above proposal shall present their alternative models.

The Secretariat further asked about the solution in a situation if there would be other problematic issues apart from political questions, e.g. regarding the social benefits package that should be offered by the Host Country.

The Chair answered that if the package offered by Sweden would not be appropriate, the Secretariat would need to be moved to another country. In the Chair's view, it is of utmost importance that the meeting of legal experts in Sweden is convened as soon as possible, but the Chair also noted that for Norway it is difficult to imagine any other solution than an international organization.

Russia suggested that one should not limit himself only to the establishment of the legal capacity of the Secretariat, but also include other obligations of the Partners, e.g., regarding working to develop bankable projects.

The Chair noted that the Russian remark is valid in general as, indeed, one should not describe the Secretariat as a body dealing with paper work only. On the other hand, the Chair stressed that the Partners have primary responsibility for developing the projects, whereas the Secretariat shall be involved and informed about project-related activities.

## **6. Preparation of draft progress - plan**

The Meeting **agreed** on the following conclusions: three Partners (Finland, Norway, Russia) agree to authorize the capacity of an international organization to the Secretariat. It is crucial to know the position of other Partners, in particular the position of Sweden, the potential Host Country.

In the view of the three Partners mentioned above, a brainstorming session with legal experts of Sweden is of utmost importance. The brainstorming session should preferably be held in the Secretariat's Host Country, Sweden, preferably during week 11; representatives from all Partners shall be invited. Before the meeting, Sweden will do its best to clarify internally if it also supports the proposed authorization of the capacity of an international organization to the Secretariat.

Sweden emphasized, however, that it would not be in a position to invite to a brainstorming session as suggested above unless the Swedish position had been clarified before such a meeting. Sweden reiterated its previous statement that it was unlikely that such a clarification would have been reached at during March.

Finally, the Chair thanked Russia for hosting the meeting and the participants for constructive discussion, and closed the meeting.

<b>Reference</b>	Annex 1
<b>Title</b>	List of participants
<b>Submitted by</b>	Secretariat
<b>Summary / Note</b>	This list includes participants who attended the meeting

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