

**Ad hoc Working Group on the Secretariat's Legal Capacity (SLC)  
First Meeting  
Oslo, Norway  
11 December 2006**

<b>Title</b>	Minutes
<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 and Welcome**

The Meeting was opened by Mr. Viktoras Meižis, the Chairman of the NDPHS CSR. Ms. Toril Roscher-Nielsen, representing the Host Country Norway, warmly welcomed the participants.

### **2. Adoption of the agenda**

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

### **3. Election of the Chair for the *Ad hoc* SLC WG**

The Chairman proposed to elect Ms. Toril Roscher-Nielsen as the Chair of the *ad hoc* Working Group.

Ms. Toril Roscher-Nielsen agreed to chair that particular meeting and proposed that the Working Group could elect the Chair during its next meeting.

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

### **4. Present state of affairs regarding the question of the Secretariat's legal capacity and further steps to resolve it**

Sweden informed the Working Group that the legal capacity for the Secretariat is of prior importance for the functioning of the Secretariat and also a prerequisite for ensuring the payment of member fees from all Partner Countries. It reminded the Working Group that the NDPHS is currently hosted as a temporary project of the CBSS as no permanent solution could be found, yet. However, this temporary solution will expire on 7 April 2007.

Further, Sweden informed the Working Group that a meeting was held between France and Sweden, just after the CSR 9, where a solution, among other things, an exchange of letters to the Ministers of the Partner Countries was discussed.

France expressed its desire to find a practical solution for the Secretariat. To link the NDPHS Secretariat to the WHO, to which all the NDPHS Partners are members, was not recommendable as the WHO did not deal with social affairs. Further, France would not support the idea of attaching the NDPHS Secretariat to an NGO, either, as the Partnership Secretariat needs to have a more official character, specially in the context of the Northern Dimension Policy Framework. Linking the Secretariat to other Nordic organizations was also questionable, as France was not a member of the Nordic Council and was only holding an observer status in the CBSS. Therefore, the only solution was authorizing a legal capacity to the NDPHS Secretariat through the exchange of letters. However, it was important to ensure that the Minister(s) signing the letter would represent their national governments.

France further informed that based on the exchange of letters, it would be able to recognize the Secretariat's legal capacity and contribute to the Secretariat's annual budget within its own budgetary capacity. It would, however, be only after the French Parliament approved the agreement to establish the NDPHS Secretariat that France would be able to earmark funds for the NDPHS Secretariat under a separate budget line, which would ensure regular payment of her contributions to the Secretariat's annual budget. Such a process can last, in average, 18 months. Until then, France offered to provide contributions within the limit of the budget of 2007 which was approved in October 2006. As in the previous year, these contributions could consist of:

- participation of experts in the HIV/AIDS EG and the Prison Health EG;
- the possibility to host expert group meetings in France;
- contributions to the database project.

Germany remarked that the Ministry of Foreign Affairs had agreed to change the status of the NDPHS Secretariat from a temporary project to a permanent one, under the condition that it was a part of or annexed to the CBSS Secretariat.

Russia considered a formal exchange of letters to be the best way towards a permanent solution, as it provided the opportunity to involve all relevant stakeholders, which would then give the authoritative weight to recognize the Secretariat's international legal capacity.

The Chair noted that it is now possible for France and Russia to accept the NDPHS Secretariat as a legal unit on its own.

France and Lithuania pointed out that the exchange of letters would only establish the Secretariat's legal capacity and would not create a new international organization.

Sweden reiterated that the Swedish Ministry of Foreign Affairs had already concluded in its memorandum of 1 November 2005 that the NDPHS Secretariat would not be an international organization, as it won't have an organ working independently of the Member States with a will of its own. The purpose of the Secretariat is to assist the NDPHS Committee of Senior Representatives. According to the Ministry for Foreign Affairs, it was however likely that the Secretariat would be regarded as subject to

international law since it was intended to have an international legal personality. Although it was likely that the legal capacity would primarily be used in the management of the Secretariat under Swedish law, it would not be limited to Sweden. Therefore, the best categorization of the Secretariat was to regard it an "international institution" such as the CBSS, the International Criminal Court or the International Tribunal for the Law of Sea and not an international organization.

The Chair thanked Sweden for the clarification but also stressed the need for an alternative, in case the exchange of letters would fail.

The CBSS explained that an exchange of letters was also the procedure chosen for the CBSS Secretariat's legal capacity. The CBSS has a core Secretariat as well as other Secretariats with their own separate budgets and separate activities. They all enjoy the legal benefits of the CBSS (core) Secretariat as such. Attaching the NDPHS Secretariat to the CBSS Secretariat would, therefore, be possible, but might cause difficulties on the part of some NDPHS Partners, as France holds only an observer status and Canada was not even an observer in the CBSS. The CBSS, therefore, suggested pursuing the proposed exchange of letters and reaffirmed that that procedure would not affect the willingness of the CBSS to continue collocation the NDPHS Secretariat in the current CBSS premises. If the envisaged exchange of letter was not to be successfully completed by April 2007, the Chairman of the CBSS CSO believed, the CBSS would be willing to positively consider an extension of the temporary project status of the NDPHS Secretariat, under the condition that the process of exchange of letters would be underway, at the latest in March 2007.

Germany stated that the exchange of letters would create an obligation for the Partners on a long-term basis, and that it would, nonetheless, be desirable for Germany to pay the membership fee on a year-to-year (voluntary) basis. Therefore, and in order not to slow down the process of authorizing a legal capacity to the Secretariat, Germany wanted to keep its status of an Associated Partner in the NDPHS until a permanent solution was found by the German Ministry of Foreign Affairs and the Ministry of Health.

Norway reiterated that the Partnership stood independently on its own feet and that it was essential to create a permanent solution for the Secretariat's legal capacity.

Sweden mentioned that the Terms of Reference required revision in the section on the authoritative language due to the France's requirement that French be an authoritative language for the NDPHS Secretariat's ToR. To that end, it invited other Partner Countries to consider if their own national languages should be added as an authoritative language.

Russia noted that it would be in favor of signing the letter at the Minister's and not at the Prime Minister's level, as it would speed up the process.

Sweden reassured Russia that the letters would be sent from the Lithuanian Ministry of Health to the Partners' Ministers of Health. Some countries may, however, require letters to be sent to their Ministries for Foreign Affairs or Ministers for Social Affairs in order to gain the authoritative power to create the legal capacity for the NDPHS Secretariat.

The Chair thanked the countries for their contributions and reminded the Working Group that no other suggestions were received to create the Secretariat's legal capacity, apart from the exchange of letters.

The Meeting **agreed** to the procedure of exchanging letters to authorize a legal capacity to the Secretariat as an international institution, as proposed by Sweden, and **requested** Sweden to continue assisting the NDPHS Chair Country in this process.

Finally, the Meeting **recommended** to the CSR to discuss further practicalities, regarding the exchange of letters in its forthcoming meeting (CSR 10) in order to ensure that the Secretariat's legal capacity can be authorized in a timely manner.

## **5. Any other business**

No specific issues were discussed in this agenda item.

## **6. Next meeting of the *ad hoc* SLC WG**

As the Secretariat's legal capacity of the NDPHS was now in the process of being resolved, the Meeting **decided** not to convene any further meetings unless further problems occurred, which would require convening such a meeting.

## **7. Adoption of the SLC 1 Meeting minutes**

The Meeting **agreed** that the Secretariat would send out draft SLC 1 Meeting minutes to the participants on 21 December 2006 and that comments on the draft would be due, at the latest, on 15 January 2007. A revised report would then be distributed on 17 January 2007 to be adopted *per capsulam* provided that no further comments are submitted within one week.

## **8. Closing of the meeting**

Meeting closed at 11.50 hours.

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<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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