THE OPPORTUNITIES AND CHALLENGES OF PRIVATE SECTOR ENGAGEMENT BY UN SECRETARIATS

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The Secretariat is a principal organ of the United Nations (UN) system. However, its importance “can be readily minimized and overlooked”. The same is true of the Secretariat’s operational dealings with non-State or “civil society” actors including public interest non-governmental organisations (NGOs) and the for-profit private sector. The latter includes individual firms, industry associations, politically-organised business groups and chambers of commerce. Part One traces the UN’s evolving relationship with non-State actors and identifies the legal foundations for interaction. Contemporary secretariat practices and engagement procedures with the private sector will be evaluated within three different settings: the UN system generally including Specialised Agencies, Funds, Conferences and Programmes; specific treaty frameworks; and finally the World Trade Organisation as a distinctive illustration. Part Two argues that greater operational effectiveness arising from private sector engagement must be balanced against several competing considerations including system coher-

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ency, impartiality, non-discriminatory treatment, commercial management and undue influence over regulatory development. Notwithstanding the difficulty of generalising within such a broad remit, commercial perspectives are inferred and emergent rights or responsibilities identified.

1. PRIVATE SECTOR ENGAGEMENT WITHIN THE UN SYSTEM

Private sector engagement is built upon the UN Charter, the constituent instruments of Specialised Agencies, Funds or Programmes, procedural rules, governing body decisions and finally secretariat practices. The UN Charter empowers the Economic and Social Council (ECOSOC) to conclude suitable consultative arrangements with non-State actors. Since 1945, the evolving practice of States and secretariats has been codified as necessary. ECOSOC Resolution 1996/31 identifies the contemporary criteria for non-State actor participation. Non-State actors concerned with “most” of ECOSOC’s activities receive “General” consultative status, those having “special competence” in only a few activities receive “Special” consultative status and non-State actors enjoying “Roster” status “make occasional and useful contributions”. Applications for consultative status are reviewed by governments in ECOSOC’s Committee on NGOs who, in turn, liaises with the Conference of NGOs in Consultative Relationship with the UN.

General consultative status entitles non-State actors to propose agenda items, make oral interventions, submit written statements, communicate with ECOSOC Committees or Commissions and attend General Assembly meetings. For example, the International Chamber of Commerce (ICC) has enjoyed General consultative status since 1946. It has utilized its right of initiative to organise study groups and collaborate with such bodies as the International Law Association. The ICC is a catalyst for conventional instruments insofar as its drafts are sponsored by developed States and evaluated against counterproposals from developing countries. Consultative status also affords access to public areas

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4 Article 71, UN Charter.
5 UN Economic & Social Council (ECOSOC) Res. 3 (II) (1946), 288B(X) (1950) & 1296(XLIV) (1968).