



**UNITED
NATIONS**



**Framework Convention
on Climate Change**

Distr.
GENERAL

FCCC/SBI/2006/6
19 April 2006

Original: ENGLISH

SUBSIDIARY BODY FOR IMPLEMENTATION

Twenty-fourth session

Bonn, 18–26 May 2006

**Item 13 (c) of the provisional agenda
Administrative, financial and institutional matters
Privileges and immunities for individuals serving on
constituted bodies established under the Kyoto Protocol**

**Consultations by the secretariat with the Secretary-General of the
United Nations on privileges and immunities for individuals serving on
constituted bodies established under the Kyoto Protocol**

Note by the secretariat*

Summary

In response to a request from the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP) at its first session (see decision 33/CMP.1), the secretariat contacted the Secretary-General of the United Nations on the issue of ensuring necessary privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol. The secretariat invited the Secretary-General to inform the secretariat of the views of his office, which would be forwarded to the Subsidiary Body for Implementation (SBI). In a memorandum dated 30 March 2006, the Office of Legal Affairs of the United Nations forwarded a response to the secretariat concerning this matter; this memorandum is contained in the annex to this document. The SBI is invited to consider the response from the Office of Legal Affairs and make a recommendation to the COP/MOP.

* This document was submitted late due to the fact that the response from the Office of Legal Affairs, United Nations, was received on 30 March 2006.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION.....	1–2	3
A. Background	1	3
B. Possible action by the Subsidiary Body for Implementation..	2	3
II. RESPONSE FROM THE OFFICE OF LEGAL AFFAIRS, UNITED NATIONS	3–4	3

Annex

Memorandum dated 30 March 2006 from the Office of Legal Affairs, United Nations, transmitting the response on privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol to the UNFCCC	4
---	---

I. Introduction

A. Background

1. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), by its decision 33/CMP.1, requested the Executive Secretary to consult with the Secretary-General of the United Nations on the issue of ensuring necessary privileges and immunities for individuals serving on the constituted bodies established under the Kyoto Protocol, and to report to the Subsidiary Body for Implementation (SBI), at its twenty-fourth session. The secretariat sent a memorandum, dated 1 February 2006, to the Secretary-General inviting the Secretary-General to inform the secretariat of the views of his office, and on 30 March 2006, the secretariat received a response from the Office of Legal Affairs, United Nations.

B. Possible action by the Subsidiary Body for Implementation

2. The SBI may wish to consider the response from the Office of Legal Affairs on the issue of privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol. The SBI may also wish to recommend a draft decision on this issue for adoption by the COP/MOP.

II. Response from the Office of Legal Affairs, United Nations

3. In its memorandum (see annex), the Office of Legal Affairs stated that it is clear that individuals who serve on the constituted bodies are exposed to potential third-party litigation in respect of the performance of their official functions. If a third-party were to bring an action against such an individual in his or her personal capacity, the individual would not currently be protected from the lawsuit, as he or she does not enjoy immunity from legal process in jurisdictions in which there is no applicable agreement.

4. The Office of Legal Affairs further stated that the 1946 Convention on the Privileges and Immunities of the United Nations cannot be automatically extended to the individuals serving on constituted bodies of the Kyoto Protocol. The extension of the Convention to persons who do not fall within its scope requires the express consent of the Parties thereto. In the circumstances, the Office of Legal Affairs set out various options, as detailed in paragraphs 7–10 of its memorandum.

Annex

**Memorandum dated 30 March 2006 from the Office of Legal Affairs,
United Nations, transmitting the response on
privileges and immunities for individuals serving on constituted bodies
established under the Kyoto Protocol to the UNFCCC**

1. This is with reference to your memorandum dated 1 February 2006 addressed to the Secretary-General with respect to the request by the Conference of Parties serving as the Meeting of the Parties to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the "COP/MOP") to "consult the United Nations Secretary-General on the issue of ensuring necessary privileges and immunities for individuals serving on the constituted bodies established under the Kyoto Protocol, and to report to the Subsidiary Body for Implementation at its twenty-fourth session", which session will be convened in May 2006.
2. You observe that the issue of privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol has come to the fore as the result of concerns expressed by the Executive Board of the Clean Development Mechanism ("the Executive Board") about the absence of privileges and immunities for its members when meetings are convened outside of Germany, the host country of the UNFCCC secretariat, and outside countries where meetings are covered by a host country agreement. We understand that such concerns arise from the possibility that legal action could be brought against individual members of the Executive Board, with respect to decisions taken by the Executive Board that have consequences for private parties participating in the Clean Development Mechanism, in jurisdictions where there are no specific agreements between the secretariat and the country of origin of the law suit.
3. You advise that this issue has been placed on the agenda of the COP/MOP, and that in order to assist the COP/MOP in its work the UNFCCC secretariat prepared a Note reviewing the legal aspects of the question. The matter was referred by the COP/MOP to the Subsidiary Body for Implementation, which body will again consider this issue when it meets in May 2006. You note that views have been expressed that the 1946 Convention on the Privileges and Immunities of the United Nations ("the Convention") should be applied to all members of the constituted bodies under the Kyoto Protocol by virtue of the arrangement on the institutional linkage of the Convention secretariat to the United Nations. You request our views so that they may be provided to the Subsidiary Body for Implementation at its next meeting.
4. It is clear that the individuals who serve on the constituted bodies are exposed to potential third-party litigation in respect of the performance of their official functions. If a third-party were to bring an action against such an individual in his or her personal capacity, the individual would not currently be protected from the lawsuit, as he or she does not enjoy immunity from legal process in jurisdictions in which there is no applicable agreement.
5. We note that individuals who serve on constituted bodies under the Kyoto Protocol enjoy privileges and immunities in Germany by virtue of the "Agreement among the United Nations, the Government of the Federal Republic of Germany and the Secretariat of the United Nations Framework Convention on Climate Change concerning the Headquarters of the Convention Secretariat" ("the Headquarters Agreement"). With respect to countries which have entered into ad hoc conference agreements, we note that such individuals, if accorded the privileges and immunities as usually accorded to experts on mission, would only enjoy such privileges and immunities in those jurisdictions (i) in respect of the period of the particular meeting/conference, and (ii) that such privileges and immunities would only continue to apply, once the meeting/conference had ended, in respect of "words spoken or

written and acts done by them in the course of the performance of their mission”; which “mission” would be interpreted as functions necessary for the particular meeting/conference. Accordingly, such privileges and immunities would not shield the individuals in question from law suits in respect of matters which fall outside the scope of the particular meeting/conference.

6. At the outset, it should be noted that the Convention cannot be automatically extended to the individuals serving on the constituted bodies of the Kyoto Protocol. The extension of the Convention to persons who do not fall within its scope requires the express consent of the parties thereto.

7. In the circumstances, the following options could be considered. First, the COP/MOP may wish to develop a legal instrument which provides for the immunity from legal process and other privileges and immunities, as appropriate, for individuals serving on constituted bodies under the Kyoto Protocol.

8. Second, pending the domestic implementation of such an instrument, the secretariat of the COP/MOP should be requested to enter into *ad hoc* agreements, legally binding on the international plane, with individual Parties to the Kyoto Protocol and other States, to provide such privileges and immunities to the individuals serving on the constituted bodies. It should be noted that in order for the secretariat of the COP/MOP to possess the capacity to enter into agreements, there must be a decision of the COP/MOP to this effect. In this respect, we would like to recall the decision outlined in document FCCC/SBI/1996/L.1/Add.4 of 8 March 1996¹, which includes under “Agenda item 7 (b) Arrangements for relocation of the Convention secretariat to Bonn”, a request to the Executive Secretary to enter into an agreement to reflect, *inter alia*, the legal personality of the Convention secretariat. In addition, we refer to a similar approach, as set forth in “Decision VI/16 Juridical personality, privileges and immunities of the Multilateral Fund”, which was adopted by the Sixth Meeting of the Parties to the Montreal Protocol².

9. We would also recommend, via the analogy of the United Nations regime of privileges and immunities, that the suggested regime for individuals serving on constituted bodies of the Kyoto Protocol should also provide for arrangements for the settlement of disputes, in cases where immunity is not waived.

10. Furthermore, it seems advisable that the COP/MOP address the question of potential claims against the constituted bodies themselves. Currently, these bodies are not shielded from legal process. Accordingly, an appropriate regime could be elaborated for this purpose.

11. We hope that you will find the above observations of assistance.

- - - - -

¹ The final text of the decision is contained in document FCCC/SBI/1996/9. This report of the Subsidiary Body for Implementation on its second session, held at Geneva from 27 February to 8 March is available at <<http://unfccc.int/resource/docs/1996/sbi/09.pdf>>.

² This text is available at <http://ozone.unep.org/Meeting_Documents/mop/06mop/6mop-7.e.pdf>.