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**SUBSIDIARY BODY FOR IMPLEMENTATION**

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**Item 14 (d) 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 Subsidiary Body for Implementation (SBI), at its twenty-fourth session, the secretariat continued to consult with the Secretary-General of the United Nations with a view to determining whether the 1946 Convention on the privileges and immunities of the United Nations (1946 Convention) could be applied to individuals serving on constituted bodies and expert review teams established under the Kyoto Protocol, or whether the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP) could invite the United Nations General Assembly to adopt a resolution that recognizes or applies the 1946 Convention to such individuals.

In a memorandum dated 30 June 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, if appropriate, make a recommendation to the COP/MOP.

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\* Reissued for technical reasons.

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## **I. Introduction**

### **A. Background**

1. The Subsidiary Body for Implementation (SBI), at its twenty-fourth session, requested the Executive Secretary to continue 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 back to the SBI at its twenty-fifth session. The SBI requested the secretariat to continue the consultations with a view to determining whether the 1946 Convention on the privileges and immunities of the United Nations (1946 Convention) could be applied to individuals serving on constituted bodies and expert review teams established under the Kyoto Protocol; or whether the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP) could invite the United Nations General Assembly to adopt a resolution that recognizes or applies the 1946 Convention to such individuals.
2. The secretariat sent a memorandum, dated 26 May 2006, to the Secretary-General inviting the Secretary-General to inform the secretariat of the views of his office, and on 30 June 2006, the secretariat received a response from the Office of Legal Affairs, United Nations<sup>1</sup>.

### **B. Possible action by the Subsidiary Body for Implementation**

3. 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 is invited to consider next steps and, if appropriate, recommend a draft decision on this issue for adoption by the COP/MOP.

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

4. In its memorandum (see annex), the Office of Legal Affairs stated that it would not be appropriate for individuals serving on constituted bodies and expert review teams under the Kyoto Protocol to be considered "Experts on missions for the United Nations" pursuant to Article VI of the 1946 Convention, as such individuals are neither appointed by the Secretary-General, nor "perform missions for the United Nations". As the bodies established under the UNFCCC and the Kyoto Protocol are not United Nations organs, experts and any other individuals serving on such bodies cannot be accorded the status of experts on mission for the United Nations under the 1946 Convention.
5. The Office of Legal Affairs proposed four options to be considered by which such individuals serving on constituted bodies and expert review teams could be provided with the necessary privileges and immunities in respect of their official functions, as detailed in paragraphs 6–9 of its memorandum.
6. The Office of Legal Affairs also stated that even if the United Nations General Assembly were to agree to a request by the COP/MOP to extend the application of the 1946 Convention to individuals serving on constituted bodies and expert review teams, States Parties would need to amend the General Convention accordingly and make corresponding changes to their domestic implementing legislation in order to give effect to such a decision.

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<sup>1</sup> This document should be read in conjunction with FCCC/SBI/2006/6.

Annex

**Memorandum dated 30 June 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 26 May 2006 addressed to the Secretary-General with respect to the request by the Subsidiary Body for Implementation, established under the UNFCCC, for further information from the United Nations Secretary-General on the scope of application of the Convention on the Privileges and Immunities of the United Nations (“the General Convention”), and in particular whether it could be applied to individuals serving on constituted bodies established under the Kyoto Protocol, and individuals serving on expert review teams under the Kyoto Protocol. You further inform us that the Parties have requested the views of the Secretary-General as to whether these individuals could enjoy privileges and immunities under the General Convention: “(a) by considering them “Experts on missions for the United Nations”, pursuant to Article VI of the General Convention; or (b) by other ways”.

2. You also seek our advice as to whether the Conference of the Parties, the supreme body of the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP), could invite the United Nations General Assembly to adopt a resolution that would recognize individuals serving on constituted bodies established under the Kyoto Protocol and individuals serving on expert review teams under the Kyoto Protocol as “Experts on missions for the United Nations” within the context of the General Convention, or a resolution that applies the General Convention to such individuals in some other way.

3. With respect to the question as to whether such individuals serving on expert bodies/review teams could be considered “Experts on missions for the United Nations” pursuant to Article VI of the Convention, we wish to advise that this would not be appropriate, as such individuals are neither appointed by the Secretary-General, nor “perform missions for the United Nations”. The “Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Missions” (ST/SGB/2002/9) provide guidance concerning the appointment of experts on missions. According to Regulation 1(b):

“... experts on missions shall make the following written declaration witnessed by the Secretary-General or an authorized representative:

“I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me by the United Nations. To discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization”.

Regulation 2 (b) unequivocally provides:

“[i]n the performance of their duties, ... experts on mission shall neither seek nor accept instructions from any Government or from any other source external to the Organization” (emphasis added). Regulation 3 further provides that “experts on mission are accountable to the United Nations for the proper discharge of their functions”.

4. As the bodies established under the UNFCCC and the Kyoto Protocol are not United Nations organs, experts and any other individuals serving on such bodies cannot be accorded the status of experts on missions for the United Nations under the General Convention.
5. In our view, the following four options could be considered by which such individuals serving on expert bodies/review teams could be provided with the necessary privileges and immunities in respect of their official functions.
  6. First, the COP/MOP could amend the Kyoto Protocol and insert additional provisions which explicitly provide for immunity from legal process and other privileges and immunities, as appropriate, for individuals serving on constituted expert bodies and expert review teams under the Kyoto Protocol. The procedure and other relevant requirements to adopt amendments are set forth under Article 20 of the Kyoto Protocol.
  7. Second, the Parties to the Kyoto Protocol could create a new multilateral instrument which would provide for the necessary privileges and immunities in respect of individuals serving on expert bodies/review teams. Such an instrument would need to be accepted, approved or ratified by the Parties to the Kyoto Protocol in order for the individuals to enjoy privileges and immunities in the national jurisdictions concerned.
  8. Third, the Parties to the Kyoto Protocol could adopt a decision to apply *mutatis mutandis* the General Convention to the individuals in question. The implementation of this decision would require appropriate action at the national level as well.
  9. Fourth, the Kyoto Protocol Secretariat could negotiate and enter into bilateral agreements with the Parties to the Kyoto Protocol to ensure that the latter accord the necessary privileges and immunities to the individuals concerned in the national jurisdictions of each Party. We note that individuals who serve on constituted bodies under the Kyoto Protocol enjoy privileges and immunities in Germany by virtue of the "Protocol amending 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 Kyoto Protocol Secretariat" ("the Headquarters Agreement"). As mentioned in our advice of 30 March 2006, in order for the Secretariat of the COP/MOP to possess the legal capacity to enter into agreements (with Parties other than Germany), there must be a decision of the COP/MOP to this effect.
  10. With respect to the question whether the COP/MOP could request the General Assembly to extend the application of the General Convention to the individuals on the expert bodies/review teams, we consider that even if the General Assembly were agree to this request, States Parties would need to amend the General Convention accordingly and make corresponding changes to their domestic implementing legislation in order to give effect to such a decision. As such, we do not consider this option to be realistic and viable.
  11. Finally, please note that this Office will be available to provide any assistance needed in the preparation of draft instruments as referred to above.

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