



**UNITED  
NATIONS**



**Framework Convention  
on Climate Change**

Distr.  
GENERAL

FCCC/TP/2007/2  
30 July 2007

ENGLISH ONLY

**Privileges and immunities for individuals serving on  
bodies established by these organizations:  
Review of the legal regime and practice of organizations  
in the United Nations system**

**Technical paper\***

*Summary*

This paper provides information on the legal regime and practice concerning privileges and immunities for individuals serving on governing, supervisory, advisory, expert and adjudicatory bodies of organizations in the United Nations system. The paper examines: how individuals serving on these various bodies are appointed and in which capacity they serve; the legal framework for privileges and immunities for these bodies and the individuals serving on these bodies; arrangements for settling claims, complaints and disputes; whether there have been claims, complaints or disputes against these bodies or their members; and whether there is insurance coverage for potential liability.

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## I. Executive summary

1. As part of the effort to assist Parties in their consideration of privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol, the secretariat contacted a number of organizations of the United Nations system to obtain information on the legal framework and practice with regard to privileges and immunities for individuals serving on bodies of these organizations.

2. The responses received by the secretariat reveal that the organizations concerned have three types of body to assist them in their work: governing or supervisory; advisory or expert; and adjudicatory. Individuals serving on these bodies are appointed through various means and either represent their respective State or serve in their personal capacity. The legal frameworks for privileges and immunities for the individuals serving on these bodies are as follows:

- (a) The United Nations, the specialized agencies and the International Atomic Energy Agency (IAEA) apply one of two agreements: the Convention on the Privileges and Immunities of the United Nations<sup>1</sup> (hereinafter referred to as the General Convention) and the Convention on the Privileges and Immunities of the Specialized Agencies<sup>2</sup> (hereinafter referred to as the Specialized Agencies Convention);
- (b) Other organizations that do not enjoy the regime of the General Convention or the Specialized Agencies Convention have provisions for privileges and immunities included in their constituent instruments, supplemented, as necessary, by multilateral agreements on privileges and immunities. For example, the World Trade Organization (WTO), the International Seabed Authority (ISA), the International Tribunal for the Law of the Sea (ITLS) and the International Criminal Court (ICC);
- (c) Those organizations that do not have privileges and immunities in their constituent instruments and do not enjoy the regime of the General Convention or the Specialized Agencies Convention rely solely on their headquarters agreements and host country agreements for privileges and immunities, which do not have general application and are applicable only in the host State. Individuals serving on bodies of these organizations have privileges and immunities only in the host State or, if possible, through their status as representatives of member States. Such organizations include the bodies established by environmental agreements, such as the secretariats of the Convention on Biological Diversity (CBD), the United Nations Convention to Combat Desertification (UNCCD) and the UNFCCC, and the Global Environment Facility (GEF).

3. With regard to dispute settlement, some organizations use the arrangements established within the United Nations system, while others have arrangements designed for their specific needs. All organizations reported that no claims, disputes or complaints have been made against the bodies or the individuals serving on these bodies, and none of the organizations has obtained insurance for potential liability against the bodies or their members.

## II. Background

4. To assist Parties in their consideration of the issues concerning privileges and immunities for individuals serving on bodies established under the Kyoto Protocol, in early 2007 the secretariat contacted 55 organizations in the United Nations system to obtain information on the legal regime and

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<sup>1</sup> *United Nations Treaty Series 15*, 13 February 1946.

<sup>2</sup> *United Nations Treaty Series 33*, 21 November 1947.

practice of these organizations with regard to privileges and immunities. In particular, the secretariat requested information on the following issues:

- (a) The expert bodies, boards, panels, commissions, working groups and other organs that have been established by the organization, or have been established in accordance with the relevant constituent instrument(s);
- (b) How individuals are appointed to serve as members on these bodies, the term of office, and whether members serve in their personal capacity;
- (c) The legal regime(s) concerning privileges and/or immunities for such bodies and their members;
- (d) Whether there have been claims, disputes or complaints by private or public legal entities against these bodies or their members, and, if so, what kind of claims, disputes or complaints;
- (e) The arrangements or procedures, including for dispute settlement, that have been established to deal with any claims, disputes or complaints against these bodies or their members;
- (f) Whether insurance coverage has been obtained for settling any potential claim or award against these bodies or their members.

5. This paper contains a summary of the 29 responses received by the secretariat, supplemented by additional research where necessary.

### **III. The bodies and their membership**

6. The responses reveal that the organizations and entities perform their mandated functions through three main types of body: governing or supervisory; advisory or expert; and adjudicatory.<sup>3</sup>

#### **A. Governing or supervisory bodies**

7. Some of the organizations described various governing bodies, including their supreme bodies,<sup>4</sup> their executive bodies – comprising a limited number of members chosen from member States – that govern between sessions of the supreme bodies,<sup>5</sup> and various subsidiary bodies that have been established to carry out governance or supervisory functions, usually in a particular sphere of the activities of the organization.<sup>6</sup> Individuals serving on these governing or supervisory bodies are representatives of States.

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<sup>3</sup> For information on the terms of reference and composition of most bodies of the United Nations system see *United Nations Handbook 2006/07*, published in 2006 by the Ministry of Foreign Affairs and Trade, Wellington, New Zealand.

<sup>4</sup> Conference of the Parties of the environmental entities; Conference of the Food and Agriculture Organization of the United Nations; GEF Assembly; International Civil Aviation Organization Assembly; IAEA General Conference; ICC Assembly of States Parties; International Monetary Fund Board of Governors; ISA Assembly; United Nations Educational, Scientific and Cultural Organization General Conference; and WTO Ministerial Conference.

<sup>5</sup> FAO Council; GEF Council; ICAO Council; IAEA Board of Governors; IMF Executive Board; ISA Council; UNESCO Executive Board; and WTO General Council.

<sup>6</sup> Various United Nations subsidiary organs, including the Economic Commission for Africa, the United Nations Economic and Social Commission for Asia and the Pacific, the Economic Commission for Latin America and the Caribbean, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, and the

## B. Advisory or expert bodies

8. The manner in which advisory or expert bodies are constituted and the capacity in which their members serve vary widely. Those individuals serving on advisory or expert bodies that are directly elected or appointed by a governing or supervisory body can serve as representatives or in a personal capacity. However, those appointed by the head of the organization, usually after consultation with State Parties or from among nominations submitted by them, tend to serve in a personal capacity.

9. Most responses did not deal with the terms of office of individuals serving on the various advisory or expert bodies in the organizations concerned. The responses from the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), the Bank for International Settlements (BIS), CBD, the Food and Agriculture Organization of the United Nations (FAO), GEF and the United Nations Compensation Commission (UNCC) described specific terms for the completion of particular projects. The World Intellectual Property Organization (WIPO) reported open-ended terms of office.

10. Almost all responses indicated the existence of numerous advisory or expert bodies, and that the individuals serving on them are selected because of their professional expertise. However, very few responses explained how advisory or expert bodies are established. Some noted that certain bodies were constituted by a governing body or by its subsidiary bodies, for example, the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO Preparatory Commission) on financial and administrative matters; the GEF Scientific and Technical Advisory Panel, which also includes working groups; and the United Nations International Law Commission. Other advisory, expert bodies were constituted by the secretariat, such as the various advisory bodies established by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).

11. With regard to the capacity of service, the responses from the organizations are as follows:

- (a) The United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and the Economic Commission for Latin America and the Caribbean are United Nations subsidiary organs (regional commissions). The individuals who serve on the commissions and their various subsidiary organs are appointed by, and represent, member States. ESCAP established five regional institutes; the individuals serving on their governing councils are nominated by the member States of ESCAP and serve as representatives. The UNRWA Commissioner-General has created numerous advisory and expert boards and groups, whose serving members are officials of UNRWA and, at times, experts from member States who serve in their personal capacity;
- (b) FAO indicated that it has a large number of statutory bodies.<sup>7</sup> Members who are appointed by the Director-General, in consultation with member States on a non-objection basis or at stand-alone meetings, serve in their personal capacity. In some cases, governments designate experts who serve as representatives;
- (c) The United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), WIPO and WTO noted that individuals serving on bodies constituted or elected by governing bodies serve in a representative capacity. WIPO noted that it only has open-ended bodies composed of representatives of States. The International Civil Aviation Organization (ICAO) noted that it has numerous panels,

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United Nations Development Programme; various ICAO committees and commissions; various specialist committees of the ICC Assembly of States Parties; various specialist committees of the ISA Assembly; and the various subsidiary bodies of the environmental entities.

<sup>7</sup> The bodies are listed at <[http://www.fao.org/unfao/govbodies/statbod\\_en.htm](http://www.fao.org/unfao/govbodies/statbod_en.htm)>.

commissions, committees, working groups and other bodies – too numerous to list – that carry out technical tasks. ICAO noted that, generally speaking, members serve in their personal capacity but, in a number of bodies, members serve as representatives;

- (d) The International Maritime Organization, UNESCO and WHO noted that individuals serving on some bodies, either internal bodies or where the individual is appointed by the head of the organization, serve in a personal capacity;
- (e) The GEF has a Scientific and Technical Advisory Panel, on which the individuals serve in a personal capacity, having been appointed by the United Nations Environment Programme Executive Director after consultation with the heads of the GEF, the United Nations Development Programme and the European Bank for Reconstruction and Development (EBRD);
- (f) The Conference of the Parties (COP) to the Basel Convention has established an Open-ended Working Group, an expanded Bureau and a Compliance Committee. Individuals serving on the Open-ended Working Group and the Bureau are representatives of States. Compliance Committee members are elected by the COP and serve in their personal capacity;
- (g) CBD has established a number of expert bodies,<sup>8</sup> whose terms of office depend on the mandate. Members are government representatives, except for members of the expert and advisory groups, who serve in a personal capacity and are nominated by the Executive Secretary from a roster established in consultation with a CBD governing or supervisory body;
- (h) The COP to the UNCCD established a number of working groups, bodies of experts, ad hoc panels and working groups to help execute the mandates of the Convention. The COP appoints intergovernmental working groups for particular purposes and these members serve in a personal capacity;
- (i) BIS noted that it does not have comparable bodies but that it hosts a number of committees and independent organizations that work out of BIS offices. Their members serve in their individual capacity for a fixed term and are selected by the committee or organization concerned. EBRD has no constituted bodies but has internal committees composed of Directors and staff of the Bank. The International Monetary Fund (IMF), from time to time, establishes ad hoc groups to carry out defined tasks; members serve in their individual capacity;
- (j) ISA has rules of confidentiality and conduct to which individuals serving in a personal capacity on advisory or expert bodies must agree as a condition of appointment.

### **C. Adjudicatory bodies**

12. A few responses described specialized adjudicatory bodies that have been established to resolve disputes that might arise between States parties or, on occasion, between the organization and private entities relating to defined subject matters within the programme mandates of the organizations.

13. ISA and ITLS noted that the Seabed Disputes Chamber of ITLS has authority to adjudicate certain disputes with private parties concerning the exercise by ISA of its powers. However, such claims

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<sup>8</sup> <<http://www.biodiv.org>>.

must be made against ISA and not against individuals serving on the bodies that made the contested decision. Individuals serving on the Seabed Disputes Chamber are elected by, and from, the ITLS judges and serve in their judicial capacity.

14. WTO has a Dispute Settlement Body, established by an agreement among States parties, to resolve trade disputes between them and, for certain disputes, between private parties under an Agreement on Preshipment Inspection. There is a standing Appellate Body for trade disputes between States parties; members serve four-year terms. Panel members are composed on an ad hoc basis from names proposed by the WTO secretariat to the parties to the dispute.<sup>9</sup> If no agreement is reached a party to the dispute may request the Director-General to appoint a member. Panel members may be delegates of States parties, State officials or persons from the private or academic sector. Individuals serving on panels and the Appellate Body serve in their personal capacity. Members are subject to code(s) of conduct and to rules to prevent conflicts of interest.

15. UNCC indicated that it has panels of commissioners, which assess claims from persons alleging loss caused during the invasion and occupation of Kuwait by Iraq. Names of prospective panel members are recommended by the Executive Secretary to the Secretary-General of the United Nations, who proposes them for appointment to the Governing Council. Commissioners serve for fixed terms in their personal capacity and are subject to rules of conduct. Decisions of the Governing Council on the recommendation of the panels are final and not subject to appeal, although there is provision for a review (in a case of alleged errors the UNCC Executive Secretary reviews the case and makes a recommendation to the Governing Council, which takes a final decision).

#### **IV. Legal framework on privileges and immunities**

16. Privileges and immunities are granted to organizations to ensure their independence from national jurisdiction. However, privileges and immunities are not intended to immunize international organizations from the obligation to deal with the substance of claims of a private law nature; they merely confer immunity from adjudication of those claims in national courts, in order to ensure operational independence. Consequently, instruments conferring detailed privileges and immunities generally contain provisions requiring that the head of the organization waive immunity, if this can be done without prejudice to the interests of the organization and if the existence of such immunity would impede the course of justice. These instruments usually also obligate the head of the organization to make dispute settlement arrangements available for any disputes of a private law nature that cannot be settled through negotiation or where a claim is made against an official or expert whose immunity is not waived by the head of the organization.

##### **A. Organizations that apply the United Nations conventions concerning privileges and immunities**

17. The United Nations has a system of privileges and immunities conferred by its constituent instruments, which is further elaborated in the General Convention and the Specialized Agencies Convention.

18. The United Nations and all its subsidiary bodies, of whatever nature, are immune from every form of legal process. Representatives of Member States to any of those bodies, staff of the United Nations and any individuals serving on those bodies in a personal capacity are also immune from every form of legal process in respect of their official functions, as representatives, officials or experts on mission, as the case may be.

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<sup>9</sup> According to Article 8.4 of the WTO agreement, members may propose names to the secretariat for inclusion on the roster of candidates for the panels <[http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm)>.

19. The specialized agencies and the IAEA have a similar legal regime for their bodies, representatives, officials and persons serving on those bodies in a personal capacity.

20. The United Nations has internal rules to ensure that no meeting or event takes place in a host State away from the established headquarters of the body concerned – where the relevant headquarters agreement covers the activities of the body – without a host country agreement being signed to cover the meeting or event.<sup>10</sup> These host country agreements have appropriate provisions for privileges and immunities for the organization and for all participating in or attending the meetings or events or performing services in an individual capacity for the United Nations body in the host State. Moreover, the conclusion of a host country agreement ensures that the regime of the General Convention applies even if the host State has not ratified it. It also ensures that all participants and all activities have an appropriate regime of privileges and immunities because the General Convention (and the Specialized Agencies Convention) applies only to the United Nations Headquarters, representatives to the United Nations, officials and experts and does not deal with invitees or observers or the particular specialized needs of the body organizing the event.

21. Some specialized agencies reported similar rules. FAO noted that it is obligated by its General Rules to enter into a Memorandum of Responsibilities for each meeting. The host State must hold FAO harmless from any third-party claims, except where damage is caused by gross negligence or wilful misconduct of staff of FAO. The World Meteorological Organization (WMO) noted that under its General Regulations, it holds meetings and events away from its headquarters only in States that have agreed that all entitled to attend such meetings will have the privileges and immunities “necessary for the independent exercise of their functions in connection with the Organization” and agreed that the host State will hold WMO and its officials harmless from injury caused by use of the premises, transport or personnel provided by the government, unless caused by the gross negligence or wilful misconduct of WMO and its personnel. WMO noted that, at times, it has difficulty in obtaining needed privileges and immunities for observers.

### **B. Organizations with separate agreements concerning privileges and immunities**

22. There are a number of organizations that do not enjoy the regime in the General Convention or the Specialized Agencies Convention, but which have privileges and immunities in their constitutive instruments, supplemented by multilateral agreements on privileges and immunities. These agreements contain a regime similar to those in the General Convention and the Specialized Agencies Convention.

23. ICC, ISA and ITLS have regimes on privileges and immunities which are based on the regimes in the two Conventions.<sup>11</sup> The Convention establishing WIPO<sup>12</sup> provides that it is to conclude bilateral or multilateral agreements with member States on privileges and immunities. WTO also relies on the regime of privileges and immunities in its constitutive instrument,<sup>13</sup> supplemented by its Headquarters Agreement, whose regime is similar to that in the Specialized Agencies Convention. These arrangements provide that persons serving in a personal capacity on WTO Dispute Panels have the privileges and immunities of WTO officials. Individuals serving on the Appellate Body have diplomatic privileges and immunities under the WTO Headquarters Agreement.

<sup>10</sup> Administrative Instruction, *Guidelines for the preparation of host country agreements falling under General Assembly resolution 40/243*, ST/AI/342 of 8 May 1987.

<sup>11</sup> Agreement on the Privileges and Immunities of the International Criminal Court, Doc. ICC-ASP/1/3 <[http://www.icc-cpi.int/about/Official\\_Journal.html](http://www.icc-cpi.int/about/Official_Journal.html)>; Protocol on the Privileges and Immunities of the International Seabed Authority <[http://untreaty.un.org/English/notpubl/seabed2\\_eng.htm](http://untreaty.un.org/English/notpubl/seabed2_eng.htm)>; Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea <[http://www.itlos.org/start2\\_en.html](http://www.itlos.org/start2_en.html)>.

<sup>12</sup> <<http://www.wipo.int/treaties/en/convention/>>.

<sup>13</sup> <[http://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](http://www.wto.org/english/docs_e/legal_e/04-wto.pdf)>.



24. Individuals serving on BIS are “generally incorporated” into the bank’s staff and thus enjoy the privileges and immunities of officials under the BIS Headquarters Agreement,<sup>14</sup> as well as the corresponding provisions in host country agreements in the countries where the committees and organizations that BIS sponsors are located.

25. The EBRD Headquarters Agreement<sup>15</sup> gives privileges and immunities, but not in respect of civil actions arising out of use of the powers of the EBRD to borrow money or to guarantee loans or sell or underwrite securities; in those cases it is subject to the jurisdiction of national courts. EBRD noted that experts serving in a personal capacity are “generally incorporated” into the bank’s staff to enable them to benefit from the privileges and immunities of staff.

26. IMF relies on the regime in its Articles of Agreement<sup>16</sup> but this does not extend privileges and immunities to experts serving in a personal capacity on advisory or expert bodies. IMF is immune from every form of judicial process, as are all Governors, Executive Directors, individuals serving on committees, representatives, advisers, officials and employees.

27. CTBTO is of particular interest. The Comprehensive Nuclear-Test-Ban Treaty has provisions on privileges and immunities that are similar to those in Article 105 of the Charter of the United Nations.<sup>17</sup> However, the Treaty is not yet in force and, as a result, these provisions do not yet protect CTBTO and its agents. It is thus in a comparable position – albeit for different reasons – to the UNFCCC and its Kyoto Protocol and other environmental bodies, which do not have provisions on privileges and immunities in their constitutive instruments and must rely on their headquarters agreements and any host country agreements for privileges and immunities. In 1999 the CTBTO Preparatory Commission, in an effort to provide a more generalized regime of protection, adopted a recommendation that called upon all States that are signatory to the Treaty “to accord to the activities of the Commission, its officials and experts, cooperation and assistance as may be necessary for the exercise of their functions and the fulfilment of the Commission’s purpose, in accordance with the laws and regulations in force in their respective countries”.<sup>18</sup>

### C. Environmental bodies

28. The constitutive instruments of various environmental entities do not provide for privileges and immunities; these entities rely solely on headquarters agreements and host country agreements. These agreements are based on the General Convention and apply its regime of privileges and immunities in the host State.

29. The absence of a generalized regime of privileges and immunities led to the adoption of decision VI/16 in October 1994 by the sixth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. This decision, inter alia, declared that officials of the

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<sup>14</sup> <<http://www.bis.org/about/legal.htm>>.

<sup>15</sup> <<http://www.ebrd.com/pubs/insti/basics.htm>>.

<sup>16</sup> <<http://www.imf.org/external/pubs/ft/aa/index.htm>>.

<sup>17</sup> Article II, paragraphs 54–56 <<http://www.ctbto.org>>.

<sup>18</sup> Report of the ninth session of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, paragraph 5.3 (Doc. CTBT/PC/-9-1) of 26 August 1999. The text of the recommendation is set out in paragraph 12.5 of the Report of Working Group A to the ninth session of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (Doc. CTBT/PC-9/1/Annex 1 of 30 August 1999). The documents are available at <<http://www.ctbto.org/bin/DeliverDoc?cmd=DisplayPDFFile&docid=1512>> and <<http://www.ctbto.org/bin/DeliverDoc?cmd=DisplayPDFFile&docid=1511>>.

Multilateral Fund for the Implementation of the Montreal Protocol shall enjoy such privileges and immunities as are needed for the independent exercise of their official functions.<sup>19</sup>

30. The GEF Secretariat indicated that neither the GEF nor individuals serving on its advisory or expert bodies have any privileges and immunities unless through their own status, for example, as representatives of member States. However, representatives to the GEF Assembly have privileges and immunities under a Memorandum of Understanding, which is concluded between the GEF secretariat, the International Bank for Reconstruction and Development (IBRD) and the host Government before each annual assembly. Individuals serving on the GEF Council do not have any privileges and immunities, other than those they may have from their status as representatives of governments. The GEF secretariat is seconded from the IBRD and has the privileges and immunities of officials of IBRD.

## V. Arrangements for settling disputes

### A. United Nations organizations and specialized agencies

31. Section 29 of the General Convention and Section 31 of the Specialized Agencies Convention require that the organization offer a dispute resolution mechanism to deal with disputes arising out of contracts or other disputes of a private law nature to which they are party, as well as disputes involving officials whose immunity has not been waived by the head of the organization.<sup>20</sup>

32. The United Nations has established an elaborate system of procedures to deal with its responsibility to address third-party claims and to provide appropriate means to settle disputes.<sup>21</sup>

33. The United Nations includes in all its contracts, agreements and arrangements a provision for arbitration pursuant to the United Nations Commission on International Trade Law Arbitration Rules, which were approved by the General Assembly in 1972.<sup>22</sup> Other private law claims and disputes with third parties are handled by a variety of means. Visitors to United Nations Headquarters premises who are injured have access to an internal Torts Claims Board, which makes a recommendation to the Secretary-General for settlement of claims, with recourse to arbitration, if the claim cannot be settled on the basis proposed by that Board.<sup>23</sup> Claims Commissions have been established in peacekeeping operations by Status of Forces Agreements to deal with all claims of a private law nature that might arise in such operations, but these Claims Commissions are rarely constituted because most third-party disputes are settled.<sup>24</sup> Claims relating to vehicle accidents are handled through a worldwide insurance policy.<sup>25</sup>

34. If a claim is made against an official or an expert in respect of actions that they took in the course of their official duties, the claimant is informed that the claim must be made against the United Nations

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<sup>19</sup> The text of this decision is reproduced in FCCC/SBI/1996/7. See also FCCC/KP/CMP/2005/6, paragraph 48, which noted that the COP or the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol has authority to take similar decisions.

<sup>20</sup> The two Conventions speak of such dispute settlement arrangements in the context of officials. However, the International Court of Justice – and the practice of the organizations – has made it clear that it applies to experts on mission (see *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion of 29 April 1999, ICJ Reports 1999, p. 62; FCCC/KP/CMP/2005/6, para. 10).

<sup>21</sup> Report of the Secretary-General, *Procedures in Place for Implementation of Article VIII, Section 29, of the Convention on the Privileges and Immunities of the United Nations*, A/C.5/49/65 of 24 April 1995.

<sup>22</sup> Report cited in footnote 21, paragraphs 4–5.

<sup>23</sup> Report cited in footnote 21, paragraph 12.

<sup>24</sup> Report cited in footnote 21, paragraphs 16–19.

<sup>25</sup> Report cited in footnote 21, paragraph 14.

itself so that it can be settled or arbitrated in accordance with the procedures for such claims. If the official or expert is nevertheless sued personally the Secretary-General will assert immunity.<sup>26</sup> If the acts of the official or expert were private acts unrelated to their official duties the Secretary-General will normally waive immunity, thereby permitting the official or expert to be sued personally.<sup>27</sup>

35. Responses from specialized agencies indicated that no special arrangements for dispute settlement have been made outside the general framework for dispute resolution established under the Specialized Agencies Convention; disputes are dealt with on an ad hoc basis through negotiation.

### **B. Other organizations and entities**

36. The basic arrangements for settlement of disputes that were described in the responses from other organizations and entities are similar to those in the General Convention and the Specialized Agencies Convention. The reason for this general formulation in the two Conventions is to address the variety of claims that can arise, as can be seen from the United Nations arrangements (see paras. 32–34 above). Similar arrangements are found in agreements concluded by other organizations. For example, BIS noted that its Headquarters Agreement provides that BIS “shall take the necessary steps to ensure the satisfactory settlement of (a) disputes arising out of contracts to which the Bank is a party and other disputes on private law matters, where the Bank enjoys immunity...(b) disputes involving any official of the Bank who...benefits from immunity, where immunity has not been waived”.<sup>28</sup> The EBRD Headquarters Agreement has similar dispute settlement arrangements,<sup>29</sup> as do other organizations that have privileges and immunities granted either by their constituent treaty or by a host country agreement.<sup>30</sup> The headquarters agreements of the environmental entities have dispute settlement arrangements based on Section 29 of the General Convention. The secretariat of the Ozone Convention reported that it sometimes provides for dispute settlement procedures if meetings are held away from its headquarters. IMF noted that it does not have any procedures for settlement of claims against individuals serving on expert ad hoc groups.

## **VI. Claims against individuals serving on advisory or expert bodies**

37. No response described any claims, disputes or complaints against individuals serving on advisory or expert bodies. As noted above, the United Nations response was limited to privileges and immunities. However, the Secretary-General of the United Nations has issued reports describing numerous claims and disputes that have not been settled and which were submitted to binding arbitration in accordance with the requirements of the General Convention.<sup>31</sup> These arbitrations do not appear to have concerned individuals serving on advisory or expert bodies.

38. FAO specifically noted that any disputes which were not against individuals serving on advisory or expert bodies were settled by negotiation. It expressed the tentative view that, although it could envisage claims against decisions of some of its expert bodies, it did not see how a claim could be brought against individual members, because any decisions affecting third parties would be decisions of the body rather than any individual member of the body.

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<sup>26</sup> Report cited in footnote 21, paragraphs 30–31.

<sup>27</sup> Report cited in footnote 21, paragraph 32.

<sup>28</sup> <<http://www.bis.org/about/legal.htm>>.

<sup>29</sup> <<http://www.ebrd.com/pubs/insti/basics.htm>>.

<sup>30</sup> See note 12.

<sup>31</sup> See, for example, Report of the Secretary-General, *Report of the Office of Internal Oversight Services on the review of procurement-related arbitration cases*, A/53/843 of 1 March 1999.

## VII. Insurance and related matters

39. No organization reported having obtained an errors or omissions insurance policy to protect against possible losses caused by malfeasance or mistakes committed by individuals serving on advisory or expert bodies performing their official activities. WHO noted that it has investigated the issue of such liability insurance but, for various reasons, including the difficulty of assessing the risk and the required coverage, the idea was not pursued. CBD explained that insurance has not been obtained because the likelihood of claims is considered low.

40. A number of responses discussed third-party liability insurance for risks arising from the use of premises, vehicles and government-supplied personnel. CTBTO noted that contracts for the establishment of monitoring stations in host States will have provision for third-party liability insurance. The Basel Convention, FAO and WMO reported that they require the host State to hold their organizations harmless from this class of third-party claims, unless caused by the gross negligence or wilful misconduct of its personnel.

41. FAO and the Basel Convention reported that they have accepted commercial insurance for liability to third parties from a host State which refused to agree to its standard hold harmless clause required from States hosting meetings and activities.

42. It should be noted that most, if not all, organizations obtain motor vehicle insurance; ITLS noted that its Headquarters Agreement requires this insurance.

## VIII. Conclusions

43. The United Nations, the specialized agencies and the IAEA rely upon the regime of privileges and immunities in the General Convention and the Specialized Agencies Convention. This regime protects individuals serving on advisory or expert bodies, whether serving as representatives or in a personal capacity. However, not all States have ratified the Conventions. Moreover, the Conventions do not deal with many matters that arise when meetings are held (such as the status of invitees, observers and the use of premises, vehicles, etc.). Accordingly, the organizations supplement the Conventions by the conclusion of headquarters agreements and host country agreements. Some organizations have internal rules that require that such agreements be in place prior to agreeing to hold meetings or events away from established headquarters duty stations.

44. The regime of privileges and immunities also protects third parties who might be affected by decisions of bodies implementing official mandates. The Conventions require dispute settlement arrangements for disputes arising out of contracts and for disputes of a private law nature involving them, as well as disputes involving personnel or agents of the organizations when the immunity of those persons is not waived. Accordingly, the possibility of claims against individuals serving on advisory or expert bodies raises issues no different from other private law claims against the organization. Most importantly for the individuals discharging mandates in their personal capacity, their privileges and immunities, combined with the dispute settlement arrangements in the Conventions, in effect transform claims against them into claims against the organization concerned if their immunity is not waived by the head of the organization.

45. The other organizations can be divided into two categories:

- (a) The first category is composed of organizations that have privileges and immunities in their constituent instruments and supplement them by headquarters agreements and, if necessary, host country agreements. They are essentially in the same position as the United Nations and the specialized agencies, although precise details of the scope and application of the privileges and immunities may differ;

- (b) The second category is essentially the environmental entities that do not enjoy a regime of privileges and immunities (or legal personality) through their constitutive instruments. They must rely solely on the regime in their headquarters agreements, supplemented, as needed, by host country agreements. The difficulty is that this regime applies only at their headquarters and in States that have signed host country agreements. The problem is lessened for staff of these entities because they tend to have United Nations appointments and thus are United Nations officials who enjoy the protection of the General Convention. Representatives of States serving on bodies of the entities will also be less vulnerable because their status as representing their government will probably protect them from lawsuits in their home States. However, those serving on environmental bodies in their personal capacity will be protected only at the entity's headquarters and at the place of meeting or event, if a host country agreement is in place.

46. A few organizations use highly specialized arrangements for the settlement of disputes arising out of the discharge of their mandated functions. WTO and ISA seem to be too specialized and function-specific to serve as a model for the UNFCCC. However, they indicate that some organizations have tailored dispute settlement arrangements to their own specialized needs.

47. A number of organizations noted that they use insurance for potential liability arising from the use of premises, vehicles and equipment, etc. WHO considered extending this insurance coverage to protect against financial losses caused by malfeasance or misfeasance by individuals serving on its advisory or expert bodies. It abandoned this effort because of the difficulty of risk assessment and consequently of formulating coverage. FAO considers that the risk against individuals serving on bodies is small because most decisions are taken collectively. The conclusion of FAO appears true for organizations – such as FAO – that have legal personality. However, for entities that do not have a separate legal existence it may be easier, at least in some legal systems, for a third party to sue an individual rather than an entity that lacks legal personality.

48. Other than the comment of WMO concerning the difficulty it has experienced from time to time in obtaining needed privileges and immunities for observers (see para. 21 above), there is no information in the responses concerning the difficulty, if any, facing any of the organizations, in particular the environmental entities, in concluding host country agreements that grant privileges and immunities to members serving on advisory or expert bodies in a personal capacity in a host State away from their headquarters.<sup>32</sup>

49. It might be helpful to ascertain the difficulty, if any, faced by the environmental entities in obtaining host country agreements that extend privileges and immunities to individuals serving on advisory or expert bodies in their personal capacity in those States. Information on which States have accorded such privileges and immunities would also be of assistance. Such protection, if in place, would apply only in the host States concerned, but a consistent pattern of such agreements may well induce national courts in other States to direct that any claims made against individuals serving on advisory or expert bodies should be made against the entity itself at its headquarters, where dispute settlement arrangements to deal with claims of a private law nature are in place.

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<sup>32</sup> Headquarters agreements are negotiated over relatively long periods of time and in the context of establishing the seat of an entity in the host State. Establishing such a seat may facilitate obtaining the parliamentary approval that is often needed to extend the regime of privileges and immunities in the General Convention to entities separate from the United Nations.