



Subsidiary Body for Implementation
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Item 20(e) of the provisional agenda

Administrative, financial and institutional matters

Continuous review of the functions and operations of the secretariat

Legal status of the secretariat

Note by the secretariat

A. Introduction

1. Twenty-nine years after the establishment of the secretariat under the Convention, the legal status of the secretariat remains ambiguous. In the past few years, this ambiguity has started to further impact the effective functioning of the secretariat. This note provides the history of the Parties' deliberations on the secretariat's legal status, outlines the difficulties faced by the secretariat at present and a possible way forward to clarify the status of the secretariat.

B. Background

2. The secretariat was established under Article 8 of the Convention. Article 8.2 (f) specifies that one of the functions of the secretariat shall be "to enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions". Article 8.3 states that "The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning."
3. At its first session in 1995, the Conference of the Parties (COP) decided that "the Convention secretariat shall be institutionally linked to the United Nations, while not being fully integrated in the work programme and management structure of any particular department or programme"¹. Since then, the COP approved the continuation of the institutional linkage of the secretariat to the United Nations and related administrative arrangements, most recently in 2005, until such time as a review is deemed necessary by either the Conference of the Parties or the General Assembly².
4. In 1995, the secretariat sought views of the Office of Legal Affairs of the UN Secretariat (UN OLA) with regard to the question of the juridical personality of the secretariat. In this context, UN OLA noted that the secretariat was not a UN subsidiary organ and had also not been duly vested by the Parties with a clear juridical personality on the international plane. The secretariat had also not been accorded the appropriate privileges and immunities, including immunity from legal process. UN OLA outlined that in view of the distinct nature of the Convention bodies and notwithstanding the fact that the secretariat was "institutionally linked to the United Nations", the legal regime enjoyed by the United Nations under applicable agreements

¹ Decision 14/CP.1, para. 2.

² Decision 11/CP.11, para. 2.

could not be automatically attached to the secretariat. UN OLA further noted that it would be appropriate to clarify the ambiguity concerning the nature and legal status of the secretariat under international law.³

5. At its first session, the COP further decided to accept the offer of the of the Government of the Federal Republic of Germany to host the Convention secretariat.⁴
6. At its second session in 1996, the Subsidiary Body for Implementation (SBI) requested “the Executive Secretary after consulting its Chairman and Officers to enter into an appropriate agreement required for the effective discharge of the secretariat’s functions in the Federal Republic of Germany, that applies to the Convention secretariat, *mutatis mutandis*, the terms of the Agreement signed on 10 November 1995 by the United Nations and the Federal Republic of Germany regarding the Headquarters of the United Nations Volunteers Programme”.⁵ The SBI also noted that this agreement should, in particular, reflect that in the host country the Convention secretariat should possess such legal capacity and enjoy such privileges and immunities as are necessary for the effective discharge of its functions under the Convention, and that the representatives of the Parties and Observer States to the Convention as well as officials of the Convention secretariat should similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions under the Convention.⁶
7. On 20 June 1996, the Government of the Federal Republic of Germany, the United Nations and the UNFCCC secretariat signed the Headquarters Agreement⁷. According to Article 3 of the Agreement, the United Nations Volunteers Programme (UNV) Headquarters Agreement is applicable *mutatis mutandis* to the secretariat. The UNV Headquarters Agreement⁸ between the Federal Republic of Germany and the United Nations of 10 November 1995, stipulates in Article 4 that the 1946 Convention on the Privileges and Immunities of the United Nations (the General Convention) and the 1961 Vienna Convention on Diplomatic Relations (the Vienna Convention) shall apply to the Headquarters district, the United Nations, including UNV, its property, funds and assets. The General Convention and the Vienna Convention thus apply *mutatis mutandis* to the UNFCCC secretariat in Germany.
8. Under Article 4(1) of the UNFCCC Headquarters Agreement:

“The Convention secretariat shall possess in the host country the legal capacity:
 - a) to contract;
 - b) to acquire and dispose of movable and immovable property;
 - c) to institute legal proceedings.”
9. At its second session in 1996, the COP approved the Headquarters Agreement signed with the Federal Republic Germany⁹. The COP also concluded that “the Conference of the Parties should consider, in the context of the review of the functioning of the institutional linkage of the Convention secretariat to the United Nations, whether the functions that have to be carried out by the secretariat necessitate that it be given juridical personality on the international plane”.¹⁰
10. At its eleventh session in 1999, the SBI, under the agenda item “Institutional linkage of the Convention secretariat to the United Nations”, recommended that consideration of this issue be deferred to 2001 in

³ FCCC/SBI/1996/7.

⁴ Decision 16/CP.1, para. 1.

⁵ FCCC/SBI/1996/9, para. 66(c).

⁶ Ibid.

⁷ 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 of 20 June 1996.

⁸ Agreement between the United Nations and the Federal Republic of Germany concerning the Headquarters of the United Nations Volunteers Programme of 10 November 1995.

⁹ Decision 15/CP.2, para. 1.

¹⁰ Decision 15/CP.2, para. 2.

conjunction with the review of the institutional linkage of the Convention secretariat to the United Nations, which was to be completed by 31 December of that year¹¹. The COP, at its fifth session, endorsed this conclusion¹².

11. At its fourteenth session in 2001, the SBI “took note of the fact that the Convention secretariat was vested with juridical personality in Germany where the headquarters of the secretariat is located and further noted that the absence of juridical personality on the international plane had not inhibited the secretariat in the effective performance of its functions. The SBI decided to hold the issue in abeyance and revisit the matter at a future date if the status of the secretariat should necessitate that it be vested with juridical personality on the international plane.”¹³ The COP, at its seventh session, took note of the report of the fourteenth session of the SBI.¹⁴
12. At the following sessions of the COP and SBI, no further consideration of the juridical personality of the secretariat on the international plane took place.
13. With regard to the necessary arrangements for holding of sessions of the COP, the COP adopts a decision requesting the Executive Secretary to conduct consultations with a State that will be hosting a session of the COP, with a view to concluding and signing a host country agreement for the forthcoming session of the COP¹⁵.

C. Issue

14. The UNFCCC secretariat has recently started to face difficulties in being recognized as an international organization by some of the Parties. On one occasion, a Party insisted that it could not enter into an agreement with the secretariat because it allegedly lacked the necessary legal status. On another occasion, a Party did not recognize that the secretariat possesses privileges and immunities. In both cases, this created significant difficulties for the secretariat’s operations. Specifically, in the first example, this impeded the receipt of funds by the secretariat requiring additional cumbersome administrative steps involving the United Nations secretariat. In the case of the second example, the conclusion of an agreement necessary for the secretariat’s efficient operations was significantly delayed while negotiations on this issue proceeded.
15. Accordingly, the continuing ambiguity over the secretariat’s legal status jeopardizes the secretariat’s functioning.

D. Considerations

16. The COP may wish to consider clarifying the nature and status of the secretariat on the international plane, including whether the secretariat enjoys or whether the COP wishes to grant, as appropriate, juridical personality and/or legal capacity as is necessary for the effective discharge of the secretariat’s functions.

¹¹ FCCC/SBI/1999/14, para.73.

¹² FCCC/CP/1999/6, para. 82.

¹³ FCCC/SBI/2001/9, paras. 56-58.

¹⁴ FCCC/CP/2001/13, para. 154.

¹⁵ See for example decisions 16/CP.25 and 17/CP.24 from the last two COPs.