Immunities of members of expert panels with the UN and related bodies

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Foreword

This thesis was written for my Master degree in Law at the University of Ghent. Ever since I became a law student, diplomatic law seemed a very interesting branch of law. Unfortunately, I was not able to attend the lectures of Professor Maes on diplomatic law, which would have made my foreknowledge on this subject bigger in order to make this a more successful thesis. Nonetheless, this process of research and writing was a very instructive experience.

I would also like to thank a few persons. First of all I would like to thank Professor Frank Maes, for giving me this very interesting and challenging subject, and for his availability throughout this two Master years. Assistants of Professor Maes, Piet Willems and Hendrik Schoukens, for guiding me through this process. Next, many thanks to my family – my parents and sister Evelyne – for their moral support and for standing by me, every step of the way. My last expression of gratitude goes out to my friends, for supporting me and staying interested in the development and progress of this thesis.
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Preface

“The law governing international immunities no longer consists primarily of a general principle resting on the questionable analogy of diplomatic immunities; it has become a complex body of rules set forth in detail in conventions, agreements, statutes and regulations.”

C.W. Jenks

Whereas diplomacy was formerly intended to deal with relations between individual states – by means of diplomatic missions – with the development of international organizations it became multilateral in form and collective in its aspirations; based furthermore on a series of agreements which gave the international organization itself and its organs a distinct and independent status. With this dissertation, I was challenged to analyze the regime of privileges and immunities applicable to experts panels with the UN and related bodies. Because there are so many international organizations and due to its position as the world’s most prominent and influential international organization, I have confined this study to the United Nations. The organization takes action on a wide range of issues, such as preservation of the environment; and given that my promoter Frank Maes lectures international environmental law, my case study will deal with the United Nations Framework Convention on Climate Change and its Kyoto Protocol. The first three parts of this study will be used as a theoretical basis – by covering a number of issues – in order to arrive at the problem statement (infra Part IV) and its possible solutions. The first and introductory part will deal with privileges and immunities in general; giving clarification of some essential terms, discussing the establishment of immunities, and making a primary distinction between diplomatic and international immunities. Since the scope of this study is limited to privileges and immunities of experts with the UN (and related bodies), the following part will introduce the United Nations on both a historical – the establishment of the organization – and institutional level – its structure and organization. Its last chapter is going to look at the United Nations as an organizer of universal conferences, and more specifically climate change conferences. After a brief introduction, I will define the organization of the United Nations Framework Convention on Climate Change and the Kyoto Protocol; this latter chapter will be an introductory note to Chapter III of Part IV (case study).

1 M. HARDY, Modern Diplomatic Law, Manchester, Manchester University Press, 1968, 95.
In the third part, I will turn to the immunities of the United Nations, which are necessary for the realization of the purposes of the Organization and for the independent exercise of the functions and duties of its personnel. Next to the different sources of these immunities and the persons entitled to them, the third chapter will cover the various existing privileges and immunities. The heart of this study is Part IV, which is going to provide a detailed analysis of my subject matter, i.e. the immunities of expert panels. Following the problem statement and the statute of experts on mission for the UN, I will turn to my case study again; dealing with the absence of a regime that provides privileges and immunities for members of constituted bodies and Expert Review Teams under the Kyoto Protocol. The analysis of my case study consists mostly of documents from the main body of the UN Convention on Climate Change – the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP) – and the Subsidiary Body for Implementation (SBI). Finally, Part V will include an overall conclusion to this work.
Part I: In general

Chapter I: Privileges and immunities

In the context of my thesis, the clarification of the essential terms is of utmost importance. The Vienna Convention of 1961 concerning diplomatic relations (further the VCDR) uses the terms “privilege”, “immunity” and “inviolability”, without giving any definition of these notions. The distinction between a privilege and an immunity is often difficult, especially because the terms are used promiscuously. Both terms indicate a special treatment or an advantage in favor of persons who belong to a certain group, in casu diplomats.

A ‘privilege’ usually indicates an exception concerning the application of laws and regulations, such as tax privileges. B. Sen gives in his “A Diplomat’s handbook of international law and practice” another definition of the term ‘privilege’: “those rights which are not essential for the fulfillment of the mission and which are given as a matter of international courtesy over and above the immunities”. The term ‘immunity’ is primarily used to indicate exemption from legal process. This immunity from jurisdiction prevents law suits against certain people (diplomatic agents, their family, consuls…) or some international organizations before domestic courts, unless their immunity has been waived. ‘Inviolability’ as an aspect of the diplomatic privileges and immunities means that “the person of a diplomatic agent, his residence, and the diplomatic premises and property may not be subject to any kind of interference on the part of the receiving state which is legally bound to afford him special protection”. Thus, it indicates privileges applicable to things, such as a diplomat’s correspondence, and immunities applicable to persons, such as criminal or civil immunity. The notion ‘inviolability’ is recognized as a fundamental rule of customary and treaty law.

The granting of privileges and immunities is based on the “principle of reciprocity”. This principle means that governments expect that other governments will reciprocate in the extension of immunities to similar categories of diplomatic and non-diplomatic personnel. This principle is confirmed in the VCDR, article 2: “The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.”

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11 Article 2 VCDR.
However, article 47 from the VCDR states that it is not discrimination when “the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State” or when “by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention”. According to my opinion, this article is detrimental to the principle of reciprocity because States are allowed to give a more favourable treatment to other States at their discretion. It can also lead to confusion and uncertainty for the administrative authorities and the municipal courts of the State.

Chapter II: The establishment of immunities

It is well known and recognized that under the customary rules of international law, each state is expected and required to allow certain rights and, in the absence of a waiver, immunities to diplomatic agents of other states accredited to that country. These rules are found in international custom, bilateral and multilateral agreements, in national legislation and in practice. Over the years, there were several theories regarding the legal basis of the immunities a diplomatic agent enjoys in the territory of the receiving state. In (doubtful) chronological order: the theory of personal representation, second the theory of extraterritoriality and thirdly the functional theory. The first, and probably oldest, theory of representation stated that a diplomatic agent was a representative or alter ego of the sovereign of the sending state, meaning that he owed no allegiance to the receiving state and as such, he could not be subject to the laws and jurisdiction of that state. There are several reasons why this theoretical approach is not fully accepted in modern diplomatic practice. In my opinion, the most important reason of non-acceptance is the fact that the theory has lost much of its validity because of the rise of the modern nation-state system, where sovereign authority was transferred to the people, especially in democratic systems.

The second theory is the doctrine of the extraterritoriality. This doctrine implies that the premises of the mission are a kind of extension of the territory of the sending state, thus falling under the law and regulations of the sending state instead of those laid down by the receiving state. This theory was again repeatedly criticized... It was said to be a juridical fiction, that failed to provide an adequate basis for immunities because of the extend of exemption it would give. If a crime were committed by a diplomatic agent, the receiving state would not have jurisdiction. This would have no imitation in the current States practice.

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12 Paragraph 2 article 47 VCDR.
19 Ibid. 17.
21 Ibid. 19.
The third, and leading theory today, is the theory of the “functional necessity”. The concept of ‘functional necessity’ is the basis for granting privileges and immunities to diplomatic agents, because otherwise they could not exercise their functions efficiently. This concept also gives the receiving states an obligation to grant a certain minimum of immunities to diplomatic agents who are accredited to their country. The law on diplomatic immunities is thus double edged. The Preamble of the VCDR confirms this theory: “Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States”. Furthermore, the rapid increase of international organizations, who are without territory or representational status, requires the granting of privileges and immunities to additional persons. Therefore, only the theory of functional necessity can explain this development. As professor F. Maes rightfully indicates in his course of diplomatic law: “Privileges and immunities are an expression of reciprocal respect, they stand in function of the diplomatic task and cannot be justified to serve the personal interests of the diplomat.”

Chapter III: Diplomatic immunities vs. international immunities

Because of the proliferation of international organizations over the last centuries, a new category of privileges and immunities arose. It is necessary in the light of this thesis to discuss the differences between diplomatic immunities and international immunities, the latter meaning the privileges and immunities of international organizations and their officials. In the first place, diplomatic agents are accredited to a State, while international officials are accredited to an international organization and exercise their functions and duties on behalf of the organization. Hence it appears that diplomatic agents perform their functions in one country at a time, whereas international officials can operate from various countries, even from their home country. According to article 5 of the VCDR however, it is possible to accredit a head of mission or assign any member of the diplomatic staff to more than one State, unless there would be an objection by any of the receiving States. It is also possible for two or more States to accredit the same person as head of mission to another State, again, unless objection is made by the receiving State. Secondly, diplomatic agents usually don’t have the nationality of the receiving State, and the scope of the immunities they enjoy can be restricted by the receiving State to their official activities only. For officials of international organizations on the other hand, it is important that they enjoy immunities against their own States of nationality; not all States accept that their own nationals who are employed by an international organization, obtain the same immunities as officials who hold other nationalities.

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22 Ibid. 19.
24 Preamble VCDR.
26 Ibid. 24.
29 Article 5 VCDR.
30 Article 6 VCDR.
32 Ibid. 30.
Thirdly, when a diplomatic agent is immune from legal process in the receiving State, he will still remain subject to legal process in the sending State.\textsuperscript{33} But in the case of international organizations, there is no sending State as such, which means that appropriate procedures have to be adopted.\textsuperscript{34} A last major difference is the principle of reciprocity (\textit{supra} chapter 1), which plays a very important role in the maintaining of diplomatic relations between States, but cannot be expanded to international organizations.\textsuperscript{35}

\textbf{Section I: Diplomatic immunities}

The legal principles of diplomatic immunities are to be found primarily in the Convention of Vienna on Diplomatic Relations from April 18, 1961. It is a multilateral convention, with currently 187 parties.\textsuperscript{36}

\textbf{The conditions}

Granting privileges and immunities to diplomatic agents means that a State consents to waive a part of its territorial sovereignty\textsuperscript{37}, which is the exclusive right of a state to exercise its powers within the boundaries of its territory.\textsuperscript{38} A State may freely appoint the members of the staff of the mission.\textsuperscript{39} They do not need credentials nor approval or consent from the receiving State, but when having the nationality of the receiving State, that State needs to approve their appointment, which may be withdrawn at any time.\textsuperscript{40} The appointment of the head of mission needs approval of the receiving State beforehand, this procedure is called “\textit{the agrément}”.\textsuperscript{41} If the receiving State refuses the \textit{agrément}, it is not obliged to motivate this decision.\textsuperscript{42} In case of refusal, the person is declared “\textit{persona non grata}”, which means “\textit{unwelcome, unacceptable}”.\textsuperscript{43} When having presented his credentials or having notified his arrival and presented a true copy of his credentials to the Ministry of Foreign Affairs of the receiving State in accordance with the practice prevailing in that State, the head of mission is considered as having taken up his functions in the receiving State.\textsuperscript{44}

Under these conditions, the privileges and immunities apply to diplomatic agents, except when their immunity has been waived by the sending State.

\textsuperscript{33} \textit{Ibid.} 30.
\textsuperscript{34} \textit{Ibid.} 30.
\textsuperscript{35} \textit{Ibid.} 30.
\textsuperscript{37} K. AHLUWALIA, \textit{The legal status, privileges and immunities of the specialized agencies of the United Nations and certain other international organizations}, The Hague, Martinus Nijhoff, 1964, 33.
\textsuperscript{38} Territorial sovereignty, \url{http://www.businessdictionary.com/definition/territorial-sovereignty.html}, consult on March 30 2012.
\textsuperscript{39} Article 7 VCDR.
\textsuperscript{40} Article 8 VCDR and F. MAES, \textit{Diplomatiek en consulair recht & multilaterale onderhandelingen}, Gent, 2011-2012, 32.
\textsuperscript{41} Article 4 VCDR.
\textsuperscript{42} \textit{Ibid.} 40
\textsuperscript{44} Article 13 VCDR.
According to article 32 of the VCDR, the sending State has the right to waive the immunity of jurisdiction of diplomatic agents and persons enjoying immunity under article 37 VCDR (inter alia family members and administrative and technical staff of the mission). "Waiver of immunity does not ‘belong’ to the individual concerned, but is for the benefit of the sending State." When immunity has been waived by the sending State, it means that the person concerned lost his or her right to appeal for immunity, and prosecution becomes a possibility. When a diplomatic agent committed a serious crime outside his function, for example, the sending State has the possibility to waive his or her immunity. Such waiver must always be express, clearly stated by the sending State. Immunity can be waived at two levels, first of all ‘in the face of the court’ (after proceedings have commenced), or secondly, by an agreement made before proceedings are commenced. Waiver of immunity from jurisdiction concerning civil or administrative proceedings does not imply waiver of immunity in respect of the execution of the judgment, thus a separate waiver is needed.

Diplomatic immunities “in transit”. When a diplomatic agent passes through or is in the territory of a third State, while proceeding to return to his post or to his own country, the third State is obliged to accord him inviolability and other privileges to ensure his transit or return. If members of his family are accompanying the agent or travelling separately to join him or to return to their country, they shall enjoy the same privileges and immunities. Third States also have the obligation not to hinder the passage of members of the administrative and technical or service staff of a mission, including members of their families, through their territories. In what concerns official correspondence and other official communications in transit (including messages in code or cipher), third States shall accord the same freedom and protection as is given by the receiving State.

**Persons entitled to privileges and immunities**

Article 1(a) to (h) of the VCDR gives definitions of the various categories of persons whose appointment, privileges and immunities are treated in the Convention. The article includes “head of the mission”, “members of the mission”, “members of the staff of the mission”, “members of the diplomatic staff”, “diplomatic agent”, “members of the administrative and technical staff”, “members of the service staff”, “private servant” and “premises of the mission”. Therefore, it is important for sending States to classify mission staff in good faith, distinguishing between those who have a diplomatic rank and those who provide support services such as interpretation, financial and security services.

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45 Paragraph 1 article 32 VCDR.
50 Paragraph 1 article 40 VCDR.
51 Ibid. 49.
52 Paragraph 2 article 40 VCDR.
53 Paragraph 3 article 40 VCDR.
54 Article 1 VCDR.
55 Ibid. 53.
First of all, a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission, these last ones are members with a diplomatic rank. According to several articles from the VCDR (infra), they are entitled to privileges and immunities. Under certain circumstances however, there are restrictions to the granting of this privileges and immunities. For example, when a diplomatic agent is a national of or permanently resident in the receiving State, he “shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions”. Other members of the staff of the mission and private servants, when being nationals of or permanently resident in the receiving State, shall only enjoy those privileges and immunities admitted by that State. Secondly, the family members (wife or husband and children) of a diplomatic agent shall enjoy the same privileges and immunities laid out in articles 29 to 36 VCDR, if they form part of his household and if they are not nationals of the receiving State. Thirdly, members of the administrative and technical staff of the mission, together with their families, shall also enjoy the privileges and immunities specified in articles 29 to 35 VCDR. A condition to this granting is that they shall not be nationals of or permanently resident in the receiving State. Their immunity from civil and administrative jurisdiction of the receiving State is only applicable to acts performed in the course of their duties. Next to that there are the service staff members, for example cooking, gardening and cleaning personnel in the domestic service of the mission. If they are not nationals of or permanently resident in the receiving State, they shall enjoy immunity for acts performed in the course of their duties and exemption from taxes on their income and from social security provisions. The last ones are the private servants of the mission, who are not employees of the sending State, and who shall only enjoy privileges and immunities granted to them by the receiving State. However, if they are not nationals of or permanently resident in the receiving State, they shall be exempt from dues and taxes on the emoluments they receive for their employment. And finally, another person whose status is discussed separately, is the diplomatic courier. His function is “to ensure by personal supervision of the bags which he accompanies that the rules of international law are observed in practice”. He or she is protected by the receiving State in the performance of his functions, and shall enjoy personal inviolability and will not be liable to any form of arrest or detention. The sending State can designate diplomatic couriers ad hoc, but in that case, the couriers immunities will cease to apply when he has delivered the diplomatic bag in his charge.

57 Article 1(e) and (d) VCDR.
58 Paragraph 1 article 38 VCDR.
59 Paragraph 2 article 38 VCDR.
60 Paragraph 1 article 37 VCDR.
61 Paragraph 2 article 37 VCDR.
62 Ibid. 60.
64 Paragraph 3 article 37 VCDR.
65 Paragraph 4 article 37 VCDR.
66 Paragraph 4 article 37 VCDR.
68 Paragraph 5 article 27 VCDR.
69 Paragraph 6 article 27 VCDR.
Commencement and termination of privileges and immunities

The commencement and termination of privileges and immunities is recorded in article 39 from the VCDR. From the moment a person, who is entitled to privileges and immunities, enters the territory of the receiving State to take up his post, he shall enjoy those privileges and immunities.\textsuperscript{70} If that person is already in the receiving State’s territory, he will enjoy the privileges and immunities from the moment his appointment is notified to the Ministry for Foreign Affairs or another ministry if agreed so.\textsuperscript{71} Concerning the termination of privileges and immunities, there are several ways to end the function of a diplomatic agent. Article 43 VCDR states that the notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end, is one way to end the diplomatic function.\textsuperscript{72} According to paragraph 2 of article 9 VCDR, when the receiving State informs the sending State that it refuses to recognize the diplomatic agent as a member of the mission, the diplomatic function also comes to an end.\textsuperscript{73} Death is another reason for termination of the diplomatic function and the accompanying privileges and immunities.\textsuperscript{74} The members of the envoy’s family on the other hand, shall continue to enjoy privileges and immunities to which they are entitled, until the expiry of a reasonable period in which they will have to leave the country.\textsuperscript{75} The VCDR does not determine the duration of this reasonable period, but it is considered as the time to put the envoy’s affairs in order.\textsuperscript{76} The termination of the diplomatic function, result in a cease of the privileges and immunities when the person who enjoyed them, leaves the country or on expiry of a reasonable period.\textsuperscript{77}

Scope of the privileges and immunities according to the Vienna Convention on Diplomatic Relations

The International Law Commission (further ILC) made a classification of diplomatic privileges and immunities in its report covering the work from its 10\textsuperscript{th} session from April 28 – July 4 1958.\textsuperscript{78} Although the division is not exclusively, according to the ILC report, privileges and immunities may be divided into the following groups: (a) immunities related to the premises of the mission and to its archives, (b) those concerning the work of the mission and (c) personal immunities and privileges of the envoy.\textsuperscript{79} It is difficult to make a clear division because of the overlap of some immunities, but eventually they are all calculated to enable the envoy to discharge his mission in an effective manner.\textsuperscript{80} Since the emphasis in this work are not the diplomatic privileges and immunities, the ILC division giving a brief overview of those privileges and immunities will be used.

\textsuperscript{70} Paragraph 1 article 39 VCDR.
\textsuperscript{71} Ibid. 69.
\textsuperscript{72} Article 43(a) VCDR.
\textsuperscript{73} Article 43(b) VCDR.
\textsuperscript{74} Paragraph 3 and 4 article 39 VCDR.
\textsuperscript{75} Paragraph 3 article 39 VCDR.
\textsuperscript{76} Prof. Dr. F. MAES, Diplomatiek en consulaire recht & multilaterale onderhandelingen, Gent, 2011- 2012, 52.
\textsuperscript{77} Paragraph 2 article 39 VCDR.
\textsuperscript{79} Document A/CN.4/117, 95.
\textsuperscript{80} B. SEN, A diplomat’s handbook of international law and practice, Londen, Martinus Nijhoff Publishers, 1988, 90.
**Premises of the mission and archives**

**Accommodation.** It is obligatory for the receiving State to facilitate or to assist the sending State in obtaining the necessary premises for its mission and suitable accommodation for their members.  

**Inviolability of the premises of the mission.** The premises consist of (parts of) buildings used for the purposes of the mission, including the surrounding land, garden and car park. Agents of the receiving State may not enter them without prior consent of the head of the mission. The receiving State has a special obligation to take the necessary steps to protect the premises against any intrusion or damage, and to prevent any disturbance of the peace of mission. The inviolability of the premises, the furniture, other property thereon and the means of transportation implies they shall be immune from search, requisition, attachment or execution. It is however required that the mission premises are used in a manner compatible with the functions of the mission, as laid down in the Convention or by other rules or by special agreements.

**Exemption of mission premises from tax.** When used for the mission, the sending State and the head of mission are exempt from all taxes concerning the premises of the mission, both national, regional or municipal dues and taxes.

**Inviolability of the archives and documents.** These are inviolable, whenever and wherever they may be. This is an additional protection, to make sure the archives and documents enjoy inviolability when being moved. Otherwise, if the archives and documents are at the mission premises, they are protected under article 22 VCDR (inviolability of the mission premises).

**Facilitation of the work of the mission, freedom of movement and communication**

**Facilities.** It is often important for a diplomatic mission to get assistance of the government and authorities of the receiving State, especially in the performance of its functions. That is why article 25 VCDR states that “the receiving State shall accord full facilities for the performance of the functions of the mission”.

**Freedom of movement and travel.** The receiving State has to ensure freedom of movement and travel in its territory to all members of the mission.

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81 Ibid. 78.
82 Article 21 VCDR.
84 Paragraph 1 article 22 VCDR.
85 Paragraph 2 article 22 VCDR.
86 Ibid. 84.
87 Paragraph 3 article 41 VCDR.
88 Article 23 VCDR.
89 Article 24 VCDR.
92 Ibid. 90.
93 Article 25 VCDR.
94 Article 26 VCDR.
Again, another necessary facility for the performance of the mission’s functions. Exceptions are possible, concerning zones where entrance is prohibited or regulated for reasons of national security.

**Freedom of communication.** For all official purposes of the mission, the receiving State shall permit and protect free communication. The concept “communication” includes all appropriate means such as diplomatic couriers and messages in code or cipher, but when installing a wireless transmitter, prior consent of the receiving State is obliged. The official correspondence, meaning all correspondence relating to the mission and its functions, shall be inviolable. The diplomatic bag may contain only diplomatic documents or articles intended for official use, and shall not be opened or detained. Concerning the diplomatic courier: *infra* persons entitled to privileges and immunities.

**Exemption from dues and taxes.** It is a universally accepted rule that the fees and charges that are levied by the mission in the course of its official duties are exempt from all dues and taxes.

**Personal privileges and immunities**

**Personal inviolability.** One of the most important articles is article 29 of the VCDR, stating that the person of a diplomatic agent is inviolable, and that the diplomatic agent is not liable to any form of arrest or detention. As in case of the mission’s premises, the receiving State shall treat the diplomatic agent with respect and take appropriate steps to prevent any attack on his person, freedom or dignity. The principle of inviolability of the diplomatic person makes sure that he is exempted from measures that would lead to direct coercion, but it does not exclude measures to prevent him from committing crimes or offences.

**Inviolability of residence and property.** The private residence of a diplomatic agent, his papers and correspondence, enjoy the same inviolability and protection as the premises of the mission (*supra* premises of the mission and archives). His property shall likewise enjoy inviolability, except in case of paragraph 3 of article 31 VCDR concerning measures of execution against the diplomatic agent.

**Immunity from jurisdiction.** Another very important principle is the immunity from jurisdiction in article 31 VCDR. It does not mean that the holder of the immunity is above national law, the obligations under the national law remain binding on him but they are unenforceable.
This immunity contains criminal, civil and administrative jurisdiction, but regarding the immunity from civil and administrative jurisdiction three exceptions have been made.\textsuperscript{109} These exceptions concern actions related to private immovable property, succession and professional or commercial activities exercised by the diplomatic agent outside his official functions in the receiving State.\textsuperscript{110} Derived from the diplomatic agent's inviolability, it is the right not to give evidence as a witness.\textsuperscript{111} It is also obvious that the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of his own country, the sending State.\textsuperscript{112} However, this jurisdiction may not be applied, because the case does not come within the general competence of the sending State’s courts, or because the laws of the sending State do not point out a local forum.\textsuperscript{113} Regardless of the privileges and immunities, it is the duty of all persons who enjoy those to respect the laws and regulations of the receiving State, including no interference with the internal affairs of that State.\textsuperscript{114} With regard to waiver of immunity (\textit{supra} the conditions).

**Exemption from social security legislation.** A diplomatic agent is exempted from social security provisions which are in force in the receiving State.\textsuperscript{115} This exemption also applies to private servants who only work for the diplomatic agent, on condition that they are not nationals of or permanently resident in the receiving State, and that they are covered by the social security provisions in force in the sending State or a third State.\textsuperscript{116} If these two conditions are not fulfilled, the obligations which the social security provision of the receiving State imposes upon employers, will apply to the diplomatic agent.\textsuperscript{117} Voluntary participation in the social security system of the receiving State is open for diplomatic agents and private servants, but must be permitted by that State.\textsuperscript{118}

**Exemption from taxation.** It is a rule of international law that diplomatic agents are exempted from all dues and taxes, “\textit{personal or real, national, regional or municipal}”\textsuperscript{119} Although that there is a degree in exemption, it varies from country to country.\textsuperscript{120} Article 34 VCDR also states some exceptions to the exemption from taxation, such as indirect taxes which are normally incorporated in the price of goods and services.\textsuperscript{121}

**Exemption from services and contributions.** Diplomatic agents are exempted by the receiving State from all personal and public services of any kind, and from military obligations such as requisitioning and contributions.\textsuperscript{122}

\textsuperscript{109} Paragraph 1 article 31 VCDR.\textsuperscript{110} Paragraph 1(a), (b) and (c) article 31 VCDR.\textsuperscript{111} Paragraph 2 article 31 VCDR.\textsuperscript{112} Paragraph 4 article 31 VCDR.\textsuperscript{113} Document A/CN.4/117, 99.\textsuperscript{114} Paragraph 1 article 41 VCDR.\textsuperscript{115} Paragraph 1 article 33 VCDR.\textsuperscript{116} Paragraph 2 article 33 VCDR.\textsuperscript{117} Paragraph 3 article 33 VCDR.\textsuperscript{118} Paragraph 4 article 33 VCDR.\textsuperscript{119} Article 34 VCDR.\textsuperscript{120} Document A/CN.4/117, 100.\textsuperscript{121} Article 34(a) to (f) VCDR.\textsuperscript{122} Article 35 VCDR.
Exemption from customs duties and inspection. The receiving State has to permit entry or grant exemption from all customs duties, taxes and related charges on articles for the official use of the mission, and on articles for the personal use of the diplomatic agent or family members. Special attention goes to the personal baggage of the diplomatic agent. This baggage will be exempt from inspection, except when there are serious grounds to believe that it contains articles that are not covered by the first paragraph of article 36 VCDR, or articles of whom the import or export is prohibited by the law or controlled by the quarantine regulations of the receiving State. If an inspection of the personal baggage takes place, it is to be conducted only in the presence of the diplomatic agent or his authorized representative.

Section II: International immunities

According to article 2(a) of the ILC’s 2009 Draft Articles on the Responsibility of International Organizations, an ‘international organization’ is “an organization established by international law and possessing its own international legal personality”. International organizations are by definition the creatures of their Member States, and so the practice has been to confer on them only ‘functional’ privileges and immunities, meaning those who are necessary for the effective performance of their functions. These immunities are granted to preserve the independence of the organization from its member States and to secure the international character of the organization. However, according to August Reinisch it appears to be a rather restrictive concept of immunity, but in practice it turns out to be a relatively broad and almost unlimited immunity from the jurisdiction of national courts. There are a number of sources of these privileges and immunities: treaties including constituent instruments of the organizations, general multilateral agreements and bilateral agreements (infra part III), customary international law and national law. A State has to grant particular privileges and immunities to an international organization, which will usually be provided by the constituent treaty of the organization. Consequently, there is no general agreement on the content of the customary law concerning the immunities of international organizations yet.

According to most treaties, international privileges and immunities are granted to three categories of persons.

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123 Paragraph 1 article 36 VCDR.
124 Paragraph 2 article 36 VCDR.
125 Ibid. 123.
129 A. REINISCH and U. A. WEBER, “The jurisdictional immunity of international organizations, the individual’s right of access to the courts and administrative tribunals as alternative means of dispute settlement”, International Organizations Law Review 1, Leiden, 2004, 59.
The first one is the organizations itself; secondly you have the officials of the organizations, including experts on a mission for the organizations; and the last category are the representatives of Member States of the organization.\textsuperscript{134} There may be a lot of treaties concerning privileges and immunities of international organizations, but there are some remarkable similarities in those treaties. The details on the other hand, may vary from treaty to treaty.

This section will only deal with the main privileges and immunities granted to the international organizations itself. The division used was defined by D. Akande and A.S. Muller, who in my opinion are two important publishers within the field of the law of international organizations. Part III of this thesis elaborates on the international immunities of the United Nations and his officials.

It appears to be the minimum principle, that officials of international organizations are immune from legal process concerning acts performed in their official capacity.\textsuperscript{135} Several of the constituent documents of international organizations provide a functional immunity from jurisdiction or also “immunity from suit”, but it is usually an absolute immunity.\textsuperscript{136} It prevents law suits against organizations before domestic courts, unless the organization waived his immunity by consenting to the proceedings and thus “lifting the shield that protects it from national jurisdiction”.\textsuperscript{137} In the practice of many courts, there is a tendency to exempt international organizations from the jurisdiction of national courts.\textsuperscript{138} An argument against this absolute immunity from jurisdiction is that it may cause injustice, because individuals would have no other remedy against the international organizations.\textsuperscript{140} Therefore, it is necessary for international organizations to provide alternative methods of dispute settlement, which can be considered a precondition for granting immunity from jurisdiction.\textsuperscript{141} International organizations also enjoy immunity from measures of execution, for instance of its property or other assets.\textsuperscript{142} But a waiver of immunity of legal process does not include a waiver of the immunity from execution; this latter must be express and separate.\textsuperscript{143}

\textsuperscript{134} Ibid. 132.
\textsuperscript{140} A. REINISCH and U. A. WEBER, “The jurisdiccional immunity of international organizations, the individual’s right of access to the courts and administrative tribunals as alternative means of dispute settlement”, International Organizations Law Review 1, Leiden, 2004, 78.
\textsuperscript{141} A. REINISCH and U. A. WEBER, “The jurisdiccional immunity of international organizations, the individual’s right of access to the courts and administrative tribunals as alternative means of dispute settlement”, International Organizations Law Review 1, Leiden, 2004, 70.
All host arrangements (between the host state and the international organization) contain a provision stating that the grounds, buildings, ad hoc offices and vehicles, used exclusively by the organization, are inviolable. The inviolability is extended to the archives and all the documents of the organization.\textsuperscript{144} This results in a negative as well as a positive obligation for the host state, the negative obligation to refrain from entering the premises or gaining access to the archives of the organization without appropriate approval, and the positive obligation to help protect the organization, its premises and archives.\textsuperscript{145}

Another main privilege of international organizations is the right to free communication. This privilege can be divided into four main elements, being: (i) the host state has the obligation to refrain from any form of censorship, (ii) the official communications of the organization are accorded a treatment no less favourable than that accorded to other governments, (iii) the organization has the right to use codes and to communicate by way of diplomatic courier and (iv) the organization is exempted from taxes, duties and export and import restrictions concerning its publications.\textsuperscript{146}

Probably the most notorious of all immunities of international organizations, are the fiscal, customs and financial immunities. However, these financial immunities are necessary to give the organization a certain degree of financial independence within the host state and to prevent host states from enriching themselves at the expense of the international organizations.\textsuperscript{147} Especially, when the organization exercises his functions in a number of countries, money must be transferred between these offices, free from financial restrictions.\textsuperscript{148} The scope of the immunities may vary for each international organization, depending on the host state and the size and mandate of the organization.\textsuperscript{149}International organizations are usually exempt from direct taxes concerning their assets, income and property.\textsuperscript{150} The exemption is extended to custom duties and other import and export restrictions concerning articles for official use.\textsuperscript{151} However, international organizations are generally not exempt from indirect taxes and charges for public utility services.\textsuperscript{152} Reimbursement can be claimed if such taxes have been paid in order to purchase goods of services for official use.\textsuperscript{153}

\textsuperscript{151} \textit{Ibid.} 149.
\textsuperscript{153} \textit{Ibid.} 151.
Chapter IV: Conclusion

The Vienna Convention on Diplomatic Relations of 1961, codifying previous rules and (bilateral) agreements, provides a framework for diplomatic relations between independent states, by specifying privileges and immunities of diplomatic missions. Although states waive a part of their territorial sovereignty by granting privileges and immunities, their regulation plays an important role in maintaining friendly relations among countries and their governments. Based on the principle of reciprocity, these privileges and immunities are granted to diplomatic agents to ensure that they can carry out their duties effectively (supra theory of the functional necessity)\(^\text{154}\) and without threat of influence by the host government.

The privileges and immunities of international organizations and their officials on the other hand, are defined in a set of treaties separate from the VCDR. In practice, international immunities are usually regulated by treaties or by the headquarters agreement, which latter is concluded with the host state where the organization is seated. Because of the nature and specific tasks of any international organization, it is not possible and probably not desirable to create a general agreement on international immunities.

\(^{154}\) As stated in the preamble of the VCDR: “Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States.”
Part II: The United Nations

Chapter I: “The United Nations at a glance”\(^{155}\)

“The United Nations is not a world government, and it does not make laws. It provides however, the means to help resolve international conflict and formulate policies on matters affecting everyone. At the UN, all Member States have a voice and vote in this process.”\(^{156}\)

In the aftermath of the Second World War, the United Nations was founded in 1945 by 51 countries.\(^{157}\) The United Nations (hereinafter referred to as the UN) is considered to be the successor of the League of Nations, created in 1919 after the First World War and the first international organization to deal with general political and other relations between States.\(^{158}\) It is an intergovernmental organization since the UN is primarily constituted of sovereign states, also referred to as Member States.\(^{159}\) The four main purposes of the UN as international organization are to maintain international peace and security, develop friendly relations among nations and promote social progress, better living standards and human rights.\(^{160}\) It has 193 Member States, 6 principal organs, 15 agencies, a founding Charter and several programs and bodies, through which it is possible to take action on a wide range of issues (\textit{inter alia} sustainable development, environment and refugees protection, counter terrorism, disarmament and non-proliferation, promoting democracy, human rights and many more).\(^{161}\)

The United Nations Headquarters have its seat at international territory in New York City, with other main offices at Geneva, Nairobi, and Vienna.\(^{162}\) For its financing, the organization relies on the contributions made by its Member States, which are assessed by a committee of the General Assembly.\(^{163}\) The six official languages of the UN are: Arabic, Chinese, English, French, Russian, and Spanish.\(^{164}\)


\(^{157}\) Ibid. 154.


\(^{162}\) Other UN Offices, Funds, Programs and Regional Commissions, \url{http://www.un.org/depts/otherprgs.htm}, consult on April 6 2012.


Chapter II: The UN as an international organization, diplomats and servants

Section I: The UN staff

The UN system as a whole, including the specialized agencies, the World Bank and the International Monetary Fund (IMF), employs some 63,450 people worldwide.166 The UN staff is appointed, through a letter of appointment, by the Secretary-General and under regulations established by the General Assembly.167 After the appointment, the staff forms a part of the Secretariat and is permanently assigned to the Economic and Social Council, the Trusteeship Council and, as required, to other organs of the United Nations.168 The required independence of the UN Staff is laid down in article 100 of the Charter, “In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization”.169 According to paragraph 3 article 101 of the UN Charter, the essential criteria for recruitment shall be “the highest standards of efficiency, competence and integrity”.170 Attention also needs to be paid on “recruiting the staff on as wide a geographical basis as possible”.171

The UN has different staff categories and within those categories different levels, which reflect increasing levels of responsibilities and requirements such as work experience.172 The UN common system173 opted for a “rank-in-person approach” which is based on personal qualifications, such as academic credentials or seniority.174 The staff categories are divided into: Professional (P) and higher categories (D) going from level P-2 to P-7 and D-1 to D-2, based on work experience; General Service (G) and related categories (Trades and Crafts, Security, Personal Information Assistants and Language Teachers); National Professional Officers (NO); Field Service (FS) and Senior Appointments (SG, DSG, USG and ASG).175

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165 Provisions concerning the UN staff are found in the UN Charter and in the Staff Regulations and Rules, provided by the Secretary-General as the chief administrative officer. Those regulations contain the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat.


168 Paragraph 2 article 101 of the Charter.

169 Paragraph 1 article 100 of the Charter.

170 Paragraph 3 article 101 of the Charter.

171 Ibid. 169.


173 The UN common system represents common standards, methods and arrangements applied to salaries, allowances and benefits for the staff of the United Nations, the specialized agencies, the International Atomic Agency and a number of other international organizations. It is designed to avoid serious discrepancies in terms and conditions of employment, to avoid competition in recruitment of personnel and to facilitate the interchange of personnel. It applies to over 52,000 staff members serving at over 600 duty stations.


Regardless of the recruited staff, the UN also engages volunteers, interns and temporary employees. 176

In the resolution 3357 (XXIX) of 18 December 1974, the UN General Assembly approved the statute of the International Civil Service Commission (further the ICSC), who was established by the General Assembly in 1972. 177 The ICSC is an independent expert body, consisting of an Executive Secretary and three divisions (Cost- of- Living, Human Resources Policies and a Salaries and Allowances division), that is mandated to regulate and coordinate the conditions of service of staff in the United Nations common system (short for “United Nations common system of salaries, allowances and other conditions of service”). 178 In some areas the ICSC is allowed to make decisions itself, while in other areas, such as the Professional salary scales, it makes recommendations to the General Assembly which then acts as legislator for the common system. 179

Diplomats who are posted at the UN are not staff members, they represent and work for their governments and not for the UN. The 193 Member States maintain “permanent missions” in New York which are headed by ambassadors, also known as permanent representatives. 180 Most of the countries also maintain permanent missions at the UN office in Geneva, Switzerland, because of the many UN meetings who are held there and the presence of the headquarters of a number of specialized agencies. 181 A distinction must be made with a “delegation”, who is established by the government of a member State and accredited for a particular (series of) meeting(s), for instance a General Assembly meeting. 182 Those delegations mostly include members of the permanent mission as adviser or representative. 183

Section II: Structure and organization

The structure of the United Nations is deeply rooted in its Charter from 1945. 184 Article 7 of the Charter created two types of organs within the UN: principal organs and subsidiary organs. 185 The six principal organs of the UN are: (i) the General Assembly, (ii) the Security Council, (iii) the Economic and Social Council, (iv) the Trusteeship Council, (v) the International Court of Justice and (vi) the Secretariat. 186 The International Court of Justice is the only principal organ who is seated in The Hague, the other 5 are seated in New York.

183 Ibid. 181.
185 Article 7 of the Charter.
186 Paragraph 1 article 7 of the Charter.
This list is exhaustive and the powers, functions and composition of these organs are determined by the Charter.\textsuperscript{187} Subsidiary organs on the other hand may be established in accordance with the Charter, if this establishment is found necessary.\textsuperscript{188} This means that subsidiary organs can always be created by the principal organs, who also determine their powers, functions and composition.\textsuperscript{189}

**The principal organs**

"The General Assembly is basically the parliament of the UN and the Security Council its executive committee, the Secretariat is the operational body of - or the bureaucracy that runs - the UN."\textsuperscript{190}

**The General Assembly**\textsuperscript{191}

The Assembly is the main deliberative, policymaking and representative organ of the UN, comprising all 193 Members of the UN.\textsuperscript{192} This organ is authorized "to discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, [...] may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters".\textsuperscript{193} Annually, the Assembly meets in a plenary meeting from September to December, discussing important international problems on the agenda.\textsuperscript{194} Special sessions, outside of the regular sessions, are convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.\textsuperscript{195}

With every annual session, a President of the Assembly is elected (according to a rotating system between the five geographic groups).\textsuperscript{196} The current President, Mr. Al-Nasser has the rank of Minister, granted by His Highness the Emir of the State of Qatar.\textsuperscript{197} His job is to prepare and preside the meetings of the Assembly.\textsuperscript{198}

\begin{itemize}
  \item \textsuperscript{188} Paragraph 2 article 7 of the Charter.
  \item \textsuperscript{189} *Ibid.* 186.
  \item \textsuperscript{191} Further referred to as the Assembly.
  \item \textsuperscript{192} General Assembly of the United Nations, \url{http://www.un.org/en/ga/}, consult on April 12 2012 and Paragraph 1 article 9 of the Charter.
  \item \textsuperscript{193} Article 10 of the Charter. Other functions and powers: article 12 to 17 of the Charter.
  \item \textsuperscript{195} Article 20 of the Charter.
  \item \textsuperscript{196} Rule 30 ROP Assembly and General Assembly: President of the 66th session, \url{http://www.un.org/en/ga/president/66/about/index.shtml}, consult on April 12 2012.
  \item \textsuperscript{197} President of the 66th session, \url{http://www.un.org/en/ga/president/66/about/index.shtml}, consult on April 18 2012.
  \item \textsuperscript{198} Rule 35 ROP Assembly.
\end{itemize}
Agenda items that are relevant to the Assembly’s work, are allocated to its 6 Main Committees who all have their own field of activity (the Disarmament and International Security Committee; the Economic and Financial Committee; the Social, Humanitarian and Cultural Committee; the Special Political and Decolonization Committee; the Administrative and Budgetary Committee and the Legal Committee). It is their duty to discuss the agenda items, and consider the various approaches of States and then present to a plenary meeting draft resolutions and decisions for consideration where possible. The Committees are chaired by representatives with the rank of ambassador. The subsidiary bodies of the Assembly, also divided into several categories (Boards, Commissions, Committees, Councils and Panels, Working Groups and others), also present their recommendations to a plenary meeting, after discussing the items on the agenda. The 193 Member States of the UN are represented in the Assembly through delegations, which consist of not more than five representatives and five alternate representatives and as many advisers, technical advisers, experts and persons of similar status as the delegation requires. A General Assembly delegation of a Member State consists of one or more officials from the ministry of foreign affairs and the staff of that country’s permanent mission with the UN. The delegation is often headed by the foreign minister, but since the Assembly's meetings generally take long, the acting head of delegation is usually the permanent representative in New York. Each Member State in the Assembly has one vote. Votes taken on important issues, such as recommendations on peace and security and the election of Security Council members, require a two-thirds majority of the members present and voting, but other questions are made by simple majority.

The Security Council

This principal organ of the UN has the primary responsibility to maintain international peace and security. To maintain its responsibility, the Council is assigned various powers, inter alia to investigate (e.g. through the appointment of special representatives) any dispute or situation which might lead to international friction, to call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression, to take military action against an aggressor. The Council has thus the authority to operate mediative as well as mandatory.

**References**


202 Rule 25 ROP Assembly.


205 Rule 82 ROP Assembly.

206 Rule 83 and 85 ROP Assembly.

207 Further referred to as the Council.

208 Article 24 of the Charter.


The Council is organized as to be able to function continuously.\textsuperscript{211} According to the rules of procedure, the Council will meet at least once every fourteen days\textsuperscript{212}, but the members usually agree not to apply this rule.\textsuperscript{213} When determining the existence of any threat to the peace, breach of the peace, or act of aggression, the Council has the power to adopt a binding resolution in accordance with article 41 and 42 of the Charter, for Member States and to a degree for other states as well.\textsuperscript{214}

The Council is composed of five permanent members or “P- 5” (China, France, the Russian Federation, the United Kingdom and the United States), and ten non-permanent members elected by the Assembly for a two year term.\textsuperscript{215} At the meetings of the Council, each member is represented by an accredited representative, in this case an ambassador.\textsuperscript{216} According to article 14 VCDR, an ambassador is the highest ranking diplomat (class 1).\textsuperscript{217} The Presidency of the Council rotates monthly, according to the English alphabetical order of the names of the Members.\textsuperscript{218} Each Council member has one vote.\textsuperscript{219} Decisions on procedural matters need an affirmative vote of at least nine of the fifteen members.\textsuperscript{220} Decisions on substantive matters require nine votes, including the concurring votes of all five permanent members.\textsuperscript{221} Thus, on substantive matters, the permanent members have a “veto” power or negative vote, through which they can put a stop to the adoption of a proposal.\textsuperscript{222}

Several subsidiary bodies were established by the Council, such as the Peacebuilding Committee, the Sanctions Committees, the Counter- terrorism Committee, the International Criminal Tribunal for the former Yugoslavia and another one for Rwanda etc.\textsuperscript{223}

\textbf{The Economic and Social Council}\textsuperscript{224}

According to article 62 of the Charter, ECOSOC is competent in two broad areas: economic and social matters (“International economic, social, cultural, educational, health, and related matters) and human rights (“human rights and fundamental freedoms for all”).\textsuperscript{225} ECOSOC is assigned several functions by the Charter: “make or initiate studies and reports”, “make recommendations”, “prepare draft conventions” and “call international conferences”.\textsuperscript{226} This organ is also charged with the coordination of the activities of the specialized agencies, through consulting with them, making recommendations to the Assembly and Members and through regular reports from the specialized agencies.\textsuperscript{227}

\begin{itemize}
  \item \textsuperscript{211} Paragraph 1 article 28 of the Charter.
  \item \textsuperscript{212} Rule 1 Provisional Rules of Procedure of the Security Council (further ROP Council), S/96/Rev.7, New York, 1983, 1.
  \item \textsuperscript{214} Article 39 of the Charter.
  \item \textsuperscript{215} Paragraph 1 and 2 article 23 of the Charter.
  \item \textsuperscript{216} Paragraph 3 article 23 of the Charter and Rule 13 ROP Council.
  \item \textsuperscript{217} Paragraph 1 article 14 VCDR.
  \item \textsuperscript{218} Rule 18 ROP Council.
  \item \textsuperscript{219} Paragraph 1 article 27 of the Charter.
  \item \textsuperscript{220} Paragraph 2 article 27 of the Charter.
  \item \textsuperscript{221} Paragraph 3 article 27 of the Charter.
  \item \textsuperscript{222} UN Security Council: Members, \url{http://www.un.org/sc/members.asp}, consult on April 12 2012.
  \item \textsuperscript{223} Subsidiary Bodies, \url{http://www.un.org/Docs/sc/index.html}, consult on April 16 2012.
  \item \textsuperscript{224} Further referred to as ECOSOC.
  \item \textsuperscript{226} Article 62 of the Charter.
  \item \textsuperscript{227} Articles 57, 58, 63 and 64 of the Charter.
\end{itemize}
A final function of ECOSOC is the mandate to make “suitable arrangements for consultation with non-governmental organizations”. The Council holds regular meetings throughout the year with prominent academics, business sector representatives and a few thousand registered non-governmental organizations present. However, the biggest annual meeting is in July, alternate in New York or Geneva, takes one month and is divided into 5 sections. Functional Commissions; Regional Commissions; Standing Committees; Expert bodies… were established as subsidiary bodies under ECOSOC.

ECOSOC is consisted of 54 members of the UN, elected by the Assembly for overlapping triennial terms. Each member has one representative. Although not stated in the Charter, it seems to be tradition to elect the permanent members of the Security Council as members of ECOSOC, while other seats are based on geographical representation. Each year, the President is elected by ECOSOC.

The Trusteeship Council

“The Charter established the Trusteeship Council as one of the main organs of the United Nations and assigned to it the task of supervising the administration of Trust Territories placed under the Trusteeship System. Major goals of the System were to promote the advancement of the inhabitants of Trust Territories and their progressive development towards self-government or independence.” But with the independence of Palau, the last remaining UN trust territory, the Trusteeship Council suspended its operations on 1 November 1994. So there is no need to further expand on this organ.

The International Court of Justice

The ICJ is the principal judicial organ of the UN, with its seat in The Hague in The Netherlands. Its role is dual, namely to settle legal disputes submitted by States and to give advisory opinions on legal questions referred by authorized United Nations organs and specialized agencies. A special jurisdiction of the ICJ, is the “compulsory jurisdiction” in article 36 of the Statute of the International Court of Justice.

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228 Article 71 of the Charter.
230 Ibid. 228.
232 Paragraph 1 and 2 article 61 of the Charter.
233 Paragraph 4 article 61 of the Charter.
236 Chapter XIII of the Charter.
238 Ibid. 236.
239 Further referred to as the ICJ.
According to this clause, “The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; the nature or extent of the reparation to be made for the breach of an international obligation.”

The ICJ consists of 15 judges, elected for 9 years, by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration. The ICJ is assisted by the Registry, being the permanent administrative organ of the Court and headed by a Registrar. It is accountable to the Court alone and consists of three Departments (Legal Matters, Linguistic Matters and Information) and several technical divisions (Personnel/Administration, Finance, Publications, Library, IT, Archives…).

The Secretariat

“The Secretariat, an international staff working in duty stations around the world, carries out the diverse day-to-day work of the Organization.” It forms the skeleton of the UN. They look after the preparation of meetings and the necessary documents, preserve the minutes of the meetings and ensure that the reports of the various bodies are available in the official UN languages. Summarized, the Secretariat services the work of the UN organs, except the ICJ, and carries out other functions assigned to it. While headquartered in New York, the Secretariat functions through service stations in Addis Ababa, Bangkok, Beirut, Geneva, Nairobi, Santiago and Vienna, and has offices all over the world.

The head of the Secretariat is the Secretary-General and, is appointed by the General Assembly upon recommendation of the Security Council. He is the chief administrative officer of the Organization. No provision in the Charter states the length of his appointment, but according to agreements made in 1945, the Secretary-General is appointed for a quinquennial, renewable term. Currently, Ban Ki-moon is the eighth Secretary-General of the United Nations, he will continue to serve until 31 December 2016. The Secretary-General acts in this capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council.

244 Article 3,4 and 13 Statute of the International Court of Justice.
246 Chapter XV of the Charter.
251 Article 97 of the Charter.
254 Article 98 of the Charter.
According to article 99 of the Charter, “the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”

This clause gives him an important political role, but the application will require “the exercise of the highest qualities of political judgment, tact and integrity”. One of the most vital roles played by the Secretary-General is the use of his “good offices”; through public consultations, private encounters or negotiations, he often tries to avoid that international conflicts rise, get worse, or expand to other countries.

The Secretariat is divided into 5 Offices and 8 Departments, each with their own responsibilities. For example, the Department of Peacekeeping Operations (DPKO) has the responsibility to define, develop, and coordinate the peacekeeping operations and other field missions.

The specialized agencies and related organizations

Except from the principal organs of the UN, the Charter also refers to another type of body, namely the specialized agencies. These agencies are established by intergovernmental agreement (separate treaties) and brought into relationship with the UN by agreement with ECOSOC, which latter must be approved by the Assembly. Their responsibilities are wide and international; in economic, social, cultural, educational, health and related fields. Admission to the UN does not imply automatic membership of any specialized agency, it is a free choice. Although they are independent international organizations with separate charters, memberships, budgets and secretariats; there is supervision by the UN. First of all, ECOSOC (at the intergovernmental level) coordinates the activities of the specialized agencies “through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations,” and takes appropriate steps to obtain regular reports from the specialized agencies.
Secondly, the Chief Executives Board (CEB) is also responsible for the coordination of the activities of the specialized agencies, at the inter-secretariat level. Established by the Secretary-General, it was set up to bring more organization to the UN system because of all the distinctive, specialized bodies, and so that the principal bodies of the United Nations could deal with the main issues of peace and security.\(^{266}\) The Board meets twice a year and consists of the Heads of 27 United Nations system organizations (including the 15 specialized agencies, 10 UN Funds and Programs, the World Trade Organization and the International Atomic Energy Agency). The Secretary-General is the chairman at the meetings.\(^{267}\) It is thus important for him to have a powerful role in these meetings, in order to accomplish the proposed coordination.

Currently, there are 15 specialized agencies which can be divided into two groups. The first and largest group consists of the Food and Agriculture Organization of the United Nations (FAO), the International Civil Aviation Organization (ICAO), the International Fund for Agricultural Development (IFAD), the International Labour Organization (ILO), the International Maritime Organization (IMO), the International Telecommunication Union (ITU), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Industrial Development Organization (UNIDO), the Universal Postal Union (UPU), the World Health Organization (WHO), the World Intellectual Property Organization (WIPO), the World Meteorological Organization (WMO) and the World Tourism Organization (UNWTO).\(^{268}\) This group is strongly connected to the UN and regulates all kinds of practical matters such as the reciprocal representation, exchange of information and official documents…\(^{269}\) This connection is expanded to the staff regulations: there is a “common system” for salaries, pensions, benefits and other conditions of employment, and for the settlement of labor-disputes.\(^{270}\) (Supra section I, paragraph 3: the ICSC). The second group includes the International Monetary Fund (IMF) and the World Bank Group, consisting of the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).\(^{271}\) These agencies are also known as the institutions of the Bretton Woods-system.\(^{272}\) These organizations chose for a position with much more independence from the UN, for instance their staff is not included in the “common system”. Regulations were also made concerning reciprocal representation, exchange of information and official documents…, but restrictions were anticipated\(^{273}\). The most important difference with the first group of specialized agencies is the “weighted voting-system” in the second group.\(^{274}\)

\(^{266}\) UN Systems Chief Executive Board, http://ceb.unsystemceb.org/, consult on April 17 2012.

\(^{267}\) Ibid. 265.


\(^{270}\) Ibid. 268.


\(^{273}\) Ibid. 268.

Each Member State has an identical but minimal number of votes. In addition to that, they receive an additional number of votes in proportion to their contribution to the capital of the concerning agency. In other words, the general policy and management, as well as the recruitment, statute and remuneration of the staff, are determined to a considerable degree by the rich and industrialized countries.

The institutional structure of the specialized agencies is rather similar, they follow a “three-level structure”. At the top level, a deliberating body that is usually called an “assembly”, “conference” or “congress”, is the legislative body of each agency. The next level is the executing body with limited membership, usually referred to as “council”, with its main task of implementing all the decisions. Finally, the bottom level is the administrative organ headed by a Secretary-General or Director-General and usually called the “secretariat” or “bureau”. It’s main functions are similar to those of the UN Assembly. However, most secretariats – except ILO and IMF – lack the authority to take binding decisions or the power to enforce such decisions.

Related organizations are the International Atomic Energy Agency (IAEA), reporting to the Council and the Assembly; the Preparatory Commission for the Nuclear-Test-Ban Treaty Organization (CTBTO); the Organization for the Prohibition of Chemical Weapons (OPCW), which both report to the Assembly and the World Trade Organization (WTO). The IAEA for instance, is an autonomous international organization that is “responsible for international activities concerned with the peaceful uses of atomic energy”. Any member of the UN or of the specialized agencies that signed the statute became a charter member of the IAEA upon ratification of the statute, and as of April 2012 the IAEA has 154 Member States. Other countries, even if they are not member of the UN or of the specialized agencies, may be admitted by the General Conference of the IAEA upon recommendation of the Board of Governors.

**Programs and funds**

The UN programs are considered to be subsidiary organs of the Assembly. The programs comprise the International Trade Centre (ITC), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children’s Fund (UNICEF), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP) United Nations Capital Development Fund (UNCDF), the United Nations Development Fund for Women (UNIFEM), the United Nations Volunteers (UNV), the United Nations Office on Drugs and Crime (UNODC), the United Nations Environment Programme (UNEP), the United Nations Human Settlements Programme (UN-

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280 Member states of the IAEA, [http://www.iaea.org/About/Policy/MemberStates/](http://www.iaea.org/About/Policy/MemberStates/), consult on July 15 2012.


HABITAT), the United Nations Population Fund (UNFPA), the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the United Nations World Food Programme (WFP). They all report to the Assembly and to ECOSOC, except for UNRWA who solely reports to the Assembly.

UNCTAD for example, is a permanent intergovernmental organ regarding trade and development that was founded in 1964 by the Assembly. With 194 members, its main objective is to assist developing countries – especially the least developed ones – and countries with economies in transition, in order to integrate beneficially into the global economy. This objective is realized through research and political analysis, intergovernmental consultation, technical cooperation and consultation with social organizations and local industries.

Ad hoc missions

“Ad hoc” means “for a particular purpose only”. These missions are temporary subsidiary organs created by the Assembly, ECOSOC and other organs, to consider specific questions. Under ECOSOC, an ad hoc Advisory Groups on African Countries emerging from conflict, an ad hoc Advisory Group on Haiti… were established.

Expert bodies

Expert bodies, consisted of small investigative teams, are subsidiary organs of a UN principal organ (e.g. the Council or the Secretary-General), usually established to serve for short periods ranging from several weeks to months. They have the responsibility to report on their activities to the organ that founded them. Expert bodies under the Council are established to investigate the implementation of sanctions in connection with the different sanctions regimes. Under ECOSOC, several expert bodies were established, composed of governmental experts or composed of members serving in their personal capacity, meaning they do not serve as representatives of a government or of any other authority external to the United Nations. However, several of the expert bodies under ECOSOC are permanent.

The United Nations Group of Experts on Geographical Names (UNGEGN) for instance, is a small group of governmental experts that meet and provide technical recommendations on standardizing geographical names at the national and international levels.\textsuperscript{294}

Chapter III: The UN as organizer of universal conferences, the case of climate change conferences

Section I: Introduction

Environmental law is an upcoming area in international law, but there is no general customary law or treaty obligation on states to protect and preserve the environment yet.\textsuperscript{295} However, according to principle 21 of the (non-binding) Declaration of the United Nations Conference on the Human Environment in Stockholm in 1972 States have “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”, also known as the no harm principle.\textsuperscript{296}

The United Nations plays an important role in the enforcement of international environmental law. In order to achieve its goals and coordinate efforts for a safer world for this and future generations, several treaties were adopted concerning protection of the marine environment and of the atmosphere, ozone depletion and climate change. In June 1992, the United Nations Conference on Environment and Development (UNCED) also known as “the Earth Summit”, took place in Rio de Janeiro.\textsuperscript{297} This Conference led to the adoption of the United Nations Framework Convention on Climate Change (UNFCCC – further referred to as the Convention) that entered into force on 21 March 1994, dealing with global warming and with the “ultimate objective” of stabilizing “greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic inference with the climate”.\textsuperscript{298} The UNFCCC (today with 195 Parties) lays down broad principles on which future measures should be based, in particular article 3 of the Convention states that developed countries should take the lead.\textsuperscript{299} But in the course of time, the Parties started realizing that the emission reductions provisions in the Convention were inadequate.\textsuperscript{300} Thus in December 1997 at the Third Conference of the Parties (COP 3, infra section II), the Kyoto Protocol, supplementing the Convention, was adopted and entered into force on 16 February 2005.\textsuperscript{301}

\textsuperscript{298} Article 2 United Nations Framework Convention on Climate Change, UNTS vol. 1771, 107 (further abbreviated as UNFCCC).
\textsuperscript{299} A. AUST, Handbook of international law (second edition), Cambridge, Cambridge University Press, 2010, 314 and paragraph 1 article 3 UNFCCC.
\textsuperscript{300} Background on the UNFCCC, http:// unfcc.int/essential_background/items/6031.php, consult on April 25 2012.
\textsuperscript{301} Kyoto Protocol, http:// unfcc.int/kyoto_protocol/items/2830.php, consult on April 24 2012.
The Protocol (today with 192 Members) sets binding targets for 37 industrialized countries and the European Community in order to reduce greenhouse gas (GHG) emissions, to be reached in the first commitment period (from 2008 to 2012). The major distinction between the Protocol and the Convention is that while the Convention encouraged industrialized countries to stabilize GHG emissions, the Protocol commits them to do so. Because the developed or industrialized countries (they are called Annex I countries, including 12 “economies in transition” from Central and Eastern Europe) are principally responsible for the current high levels of GHG emissions, the Protocol places a more heavy burden on them under the principle of “common but differentiated responsibilities and respective capabilities.” Primarily, under the Convention, Parties must meet their targets by way of three market-based mechanisms, being emissions trading, Clean Development Mechanism (CDM) and Joint Implementation (JI). These mechanisms allow the Parties to achieve their reduction objectives in the most economically advantageous way as possible, since it gives Parties the right to exceed their allowed quota and to compensate this shortage by systems which make exchanging the granted emission rights possible. As set out in article 17 of the Protocol, emission trading allows countries, that have emission units to spare, meaning emissions permitted to them but not used by them, to sell this excess capacity to countries that are over their targets. Such trading is supplemental to domestic actions. Article 12 of the Protocol defined the Clean Development Mechanism or CDM, “under which agents from industrial countries can earn emission credits for certified reductions from investments in “clean development” projects in developing countries that have not taken on binding targets”, for example through the installation of more energy-efficient boilers. This mechanism is overseen by the CDM Executive Board (further CDM EB, infra section IV). The last mechanism is defined by article 6 of the Protocol, namely Joint Implementation or JI. In this case, two industrialized countries cooperate to tackle the emission of GHG; the donor country invests in an emission-reduction or emission-removal project in the host country, in exchange for emission reduction units (ERU’s), which the donor country can add up to its own emission rights. This procedure is verified by the Joint Implementation Supervisory Committee (further JI SC, infra section IV).

302 Ibid. 300.
303 Ibid. 300.
304 Paragraph 1 article 3 (principles) UNFCCC.
309 Article 17 of the Protocol.
Section II: The common bodies of the Convention and Kyoto Protocol

The UNFCCC is constituted of many bodies, of which only the most important ones will be discussed. At the top level, the Conference of the Parties (further abbreviated as COP) is the supreme decision making body of the Convention, where all governments that are party to the Convention are represented. Its main task is to watch over the implementation of the Convention, by reviewing the communications and emission inventories submitted by the Parties, based on which the COP assesses the effects of the measures taken by Parties and the progress they made in achieving the ultimate objective of the Convention (supra paragraph 2 section I). The COP generally meets every year in Bonn, at the seat of the secretariat, unless a Party offers to host the session. The Presidency of the COP rotates with every session among the five recognized UN regions, i.e. (1) Africa, (2) Asia, (3) Latin America and the Caribbean, (4) Central and Eastern Europe and (5) Western Europe and Others. The Bureau of the COP, assisting the COP, is consisted of the President, seven Vice-Presidents, the Chairmen of the subsidiary bodies and a Rapporteur. The governments of the Parties are represented by a delegation consisting of a head of delegation and such other accredited representatives, alternate representatives and advisers as it may require.

The COP refers to the Parties of the Convention, while the Meeting of the Parties (further abbreviated as MOP) refers to the Parties of the Kyoto Protocol. The COP serving as the MOP to the Kyoto Protocol (further abbreviated as CMP), is a structure that is intended to reduce costs and streamline the management of the Convention and Kyoto Protocol processes. It has similar functions to those carried out by the COP. Its main tasks consist of reviewing the implementation of the Kyoto Protocol and taking decisions to promote its effective implementation. All the governments that are party to the Kyoto Protocol are represented in the CMP, while governments that are not party, are observers which have no right take decisions. The CMP meets annually during the same period as the COP.

Based on article 7(i) of the UNFCCC, two permanent subsidiary bodies were established by the COP, being the Subsidiary Body for Scientific and Technological Advice (further abbreviated as the SBSTA) and the Subsidiary Body for Implementation (further the SBI). Both bodies also serve the CMP. The SBSTA supports the work of the COP/CMP by way of regularly providing information and advice on scientific and technological matters relating to the Convention. The SBI assists the COP/CMP in the assessment and review of the effective implementation of the Convention.

313 Conference of the Parties (COP), http:// unfcc.int/bodies/body/6383.php, consult on April 26 2012.
315 Rule 22 ROP COP.
316 Rule 17 ROP COP.
318 Ibid. 316.
319 Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP), http:// unfcc.int/bodies/body/6397.php, consult on April 26 2012.
320 Article 9 and 10 UNFCCC and paragraph 2 rule 27 ROP COP.
321 Paragraph 1 article 9 UNFCCC.
322 Paragraph 1 article 10 UNFCCC.
Both subsidiary bodies are open to participation by all Parties and comprise government representatives, competent in the relevant field of expertise. At the commencement of the first meeting of each ordinary session, the Chairmen of these bodies are elected out of the representatives of the Parties present at the session. The subsidiary bodies elect their own Vice-Chairmen and Rapporteurs, taking into account the principle of equitable geographical representation and they serve for maximum two consecutive terms of one year. The SBSTA and the SBI traditionally meet in parallel, at least twice a year. When they are not meeting in conjunction with the COP, the subsidiary bodies usually convene at the seat of the secretariat.

The Climate Change Secretariat is designated by the COP. Its functions are various, from making arrangements for sessions of the COP and its subsidiary bodies and facilitating assistance to the Parties, to compiling and transmitting reports that are submitted to it.

Section III: The Convention bodies

In addition to the permanent subsidiary bodies (SBSTA and SBI), the COP has established, in accordance with Article 7(i) of the UNFCCC, additional bodies to support the implementation of the Convention. Two ad hoc working groups; an Adaption Committee; a Standing Committee; two expert groups and a Technology Executive Committee were constituted, of whom candidates to these bodies are nominated by the respective regional group and appointed to such bodies by the COP.

Section IV: The Kyoto Protocol bodies

Under the Kyoto protocol several bodies were constituted as well, to assist the CMP with the implementation of the Protocol. Worth mentioning are the CDM EB, the JI SC and the Compliance Committee. First of all, the CDM EB, supervises the CDM under the Protocol and prepares decisions for the CMP. The Executive Board comprises 10 members from Parties to the Protocol who are elected by the CMP, one member from each of the five UN regional groups, two other members from the Annex I Parties, two other members from the non-Annex I Parties, and one representative of the small island developing States. The CDM EB elects its own Chair and Vice-Chair, which positions alternate annually, one being a member from an Annex I Party and the other being from a non-Annex I Party. Members and alternates of the CDM EB “shall act in their personal capacity”.

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325 Paragraph 1 article 9 and paragraph 1 article 10 UNFCCC.
326 Paragraph 1 rule 22 ROP COP.
327 Paragraph 5 rule 27 ROP COP.
329 Paragraph 3 article 8 UNFCCC.
330 Paragraph 2 article 8 UNFCCC.
335 Rule 4, Rules of procedure of the Executive Board of the clean development mechanism, FCCC/KP/CMP/2005/8/Add.1, 32 (further ROP CDM EB).
Under rule 32, the Executive Board may establish committees, (expert) panels or working groups to assist it in the performance of its functions.\(^{336}\)

Secondly, there is the JI SC, under the authority and guidance of the CMP. This body supervises the JI procedure and the verification of ERU’s generated by JI projects.\(^{337}\) According to rule 15, the JI SC meets at least two times each year, but is not obligated to meet at the headquarters of the secretariat or in conjunction with meetings of the CMP.\(^{338}\) It also comprises 10 members from Parties to the Protocol who are elected by the CMP, three members from Annex I Parties that are undergoing the process of transition to a market economy; three members from Annex I Parties not before mentioned; three members from non-Annex I Parties and one member from the small island developing States.\(^{339}\) The members serve in their personal capacity, meaning that they are independent.\(^{340}\) The election of the Chair and Vice-Chair positions is similar to that of the CDM EB.\(^{341}\) The JI SC “may establish subcommittees, panels or working groups to assist it in performing its functions”.\(^{342}\)

At last, the Compliance Committee, is made up off two branches: a Facilitative Branch (FB), providing advice and assistance to Parties in order to promote compliance with the commitments under the Protocol; and an Enforcement Branch (EB), determining consequences for Parties who are not meeting their commitments.\(^{343}\) Both branches are composed of ten members elected by the CMP, including one representative from each of the five official UN regions, one from the small island developing States, and two each from Annex I and non-Annex I Parties; all acting in their personal capacity.\(^{344}\) The bureau of the Committee is constituted of the Chair and the Vice-Chair of both branches; they are elected from among the members of each branch for a term of two years, one from an Annex I Party and one from a non-Annex I Party.\(^{345}\) The Committee meets at least two times each year, sometimes in conjunction with the meetings of other subsidiary bodies.\(^{346}\)

Another “body” that deserves special attention are the expert review teams (ERT’s). Under article 8, paragraphs 2 and 3 of the Protocol, the appointment of ERT’s is authorized. They provide “a thorough and comprehensive technical assessment of all aspects of the implementation by a Party to this Protocol”, including a review on the information submitted by Parties in their annual inventories under article 7 of the Protocol.\(^{347}\)

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\(^{336}\) Rule 32 ROP CDM EB.

\(^{337}\) Constituted bodies under the Kyoto Protocol, [http://unfccc.int/kyoto_protocol/kyoto_protocol_bodies/items/2772.php](http://unfccc.int/kyoto_protocol/kyoto_protocol_bodies/items/2772.php), consult on April 28 2012.


\(^{339}\) Rule 3 and 4 ROP JI SC.

\(^{340}\) Paragraph 3 rule 4 ROP JI SC.

\(^{341}\) Rule 12 ROP JI SC.

\(^{342}\) Paragraph 2 rule 27 ROP JI SC.

\(^{343}\) Compliance Committee, [http://unfccc.int/bodies/body/6432.php](http://unfccc.int/bodies/body/6432.php), consult on April 28 2012.


\(^{345}\) Paragraph 4 Decision 27/CMP.1.

\(^{346}\) Paragraph 10 Decision 27/CMP.1.

\(^{347}\) Article 8, paragraph 1 and 3 of the Protocol.
They are coordinated by the secretariat and comprise experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided by the COP.\textsuperscript{349} Again, these ERT’s serve in their personal capacity.\textsuperscript{349}

Chapter IV: Conclusion

“Our UN is a structural monstrosity, a conglomeration of organizations, divisions, bodies and secretariats all with their distinctive acronyms [...]”.\textsuperscript{350}

Due to its unique international character, and the powers vested in its founding Charter, the UN can take action on a wide range of issues, and provide a forum for its Members to express their views, through the principal organs and other bodies and committees.\textsuperscript{351} It is however very difficult, at least it was to me, to analyze the structure of the UN (the “United Nations family”), since it comprises six principal organs, each with their subsidiary bodies and within these organs several divisions (programs and funds, ad hoc bodies, expert bodies, commissions etc.) \textit{(infra} appendix I: UN System Organizational chart). Every principle organ has its specific tasks, through which the UN is able to meet its goals. The Assembly is the main deliberative, policymaking and representative organ, providing a forum for multilateral discussion of international issues covered by the Charter. The Council has the responsibility to maintain international peace and security, and has the power to adopt binding resolutions in certain occasions (for example when an act of aggression occurs). Next is ECOSOC, competent in economic and social matters and in human rights; with the right to make recommendations, call international conferences… The judicial organ of the UN is the International Court of Justice in The Hague, where legal disputes submitted by States are settled and advisory opinions on legal questions are given. The skeleton of the UN is formed by the Secretariat, headed by the Secretary-General. This organ carries out the day-to-day work of the Organization. The Secretary-General has an important role, and “is a symbol of United Nations ideals and a spokesman for the interests of the world’s peoples, in particular the poor and vulnerable among them.”\textsuperscript{352} Another very important part of the UN family are the specialized agencies, who are established by intergovernmental agreement and brought into relationship with the UN by agreement with ECOSOC. There are fifteen agencies; active in economic, social, cultural, educational and other related fields.

One of the many goals of the UN is to safeguard and preserve the environment. Over the years, several treaties were adopted concerning protection of the atmosphere, ozone depletion, climate change \textit{etc}. At the Earth Summit of 1992 in Rio de Janeiro, the UNFCCC\textsuperscript{353} was adopted, with the ultimate objective of “stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic inference with the climate.”\textsuperscript{354}

\begin{itemize}
\item Article 8, paragraph 2 of the Protocol.
\item CMP 1, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, \textit{FCCC/KP/CMP/2005/6}, 9 (further \textit{FCCC/KP/CMP/2005/6}).
\item The role of the Secretary-General, \url{http://www.un.org/sg/sg_role.shtml}, consult on July 17 2012.
\item United Nations Framework Convention on Climate Change.
\item Article 2 of the UNFCCC.
\end{itemize}
But since the emission reductions provisions in the Convention were inadequate, the Kyoto Protocol was adopted in 1997, to supplement the Convention. This protocol sets binding targets for several industrialized countries and the European community in order to reduce GHG emissions. Next to national measures, the Protocol offers additional mechanisms for Parties to meet their targets: emissions trading, clean development mechanism and joint implementation. To implement both the Convention and the Protocol, the Conference of the Parties (COP), Meeting of the Parties (MOP) and the COP serving as the MOP to the Protocol (CMP) were established as the supreme decision-making bodies. Complementary, the two permanent subsidiary bodies, established by the COP and both serving COP and CMP, are the SBSTA and SBI. Worth mentioning are the CDM EB, the JI SC and the Compliance Committee, constituted under the Protocol to assist the CMP with the implementation of the Protocol.

355 GreenHouse Gas.
356 The Subsidiary Body for Scientific and Technological Advice (SBSTA), the Subsidiary Body for Implementation (SBI).
357 The Clean Development Mechanism Executive Board (CDM EB), the Joint Implementation Supervisory Committee (JI SC).
Part III: Immunities of UN personnel

This part reviews the international privileges and immunities, in specific those of the UN and its personnel in a large sense. According to documents of the UN Conference on International Organization who took place in 1945, the terms privileges and immunities imply “all that could be considered necessary to the realization of the purposes of the Organization, to the free functions of its organs and to the independent exercise of the functions and duties of their officials”.\(^\text{358}\) Thus they are designed to permit activities of the UN to take place without national hindrance.\(^\text{359}\) At the heart of the regime lies the immunity from suit in national courts for the UN, representatives of Member States, officials and experts on mission; together with an obligation on the UN to provide for an alternative means of settling such disputes if immunity is not waived by the Secretary-General \((\text{supra Part I, Chapter III, Section II: International immunities paragraph 3})\).\(^\text{360}\) To ensure the enjoyment of these privileges and immunities, the three parties involved - the organization, the host State and the individual State concerned - have to cooperate.\(^\text{361}\)

First I will discuss the sources of the privileges and immunities of the UN and its officials, which are primarily conventional; following the entitled persons, the assigned immunities and the duration will be defined. An important source of information in the first chapter is John Kerry King (1917-2003), a former CIA official and business consultant. His thesis “The privileges and immunities of the personnel of international organizations” (1949), for which he received a doctorate in political science from the Graduate Institute of International Studies in Geneva, is the guide for my classification. B. S. Murty uses the same sources, from which the privileges and immunities of the officials of an international organization are derived.\(^\text{362}\)

**Chapter I: Legislation**

The United Nations Charter

Signed on June 26, 1945 in San Francisco, at the conclusion of the United Nations Conference on International Organization, the founding Charter came into force on October 24, 1945.\(^\text{363}\) It is the constituting instrument of the UN, which sets out the rights and obligations of Member States, and establishes the United Nations organs and procedures.\(^\text{364}\) Currently, the Charter is signed and ratified by the 193 UN Member States (accepting the Charter provisions is a condition for membership of the UN).\(^\text{365}\)

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\(^{359}\) FCCC/KP/CMP/2005/6, 3.

\(^{360}\) FCCC/KP/CMP/2005/6, 3-4.


\(^{365}\) Article 4 of the Charter.

According to article 104 of the Charter, the UN has to enjoy in the territory of each of its Members such legal capacity as necessary, for the exercise of its functions and the fulfillment of its purposes.\footnote{367}{Article 104 of the Charter.} The leading article on privileges and immunities however is article 105 of the Charter, stating that the Organization “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes”.\footnote{368}{Paragraph 1 article 105 of the Charter.} The principle of “functional” immunity was thus firmly established in the founding document of the United Nations.\footnote{369}{A. REINISCH, Introduction on The convention on the privileges and immunities of the specialized agencies, http://untreaty.un.org/cod/avl/ha/cpiun-cpisa/cpiun-cpisa.html, consult on May 10 2012.} The phrase “in the territory of each of its Members” clearly obliges each Member to grant the necessary privileges and immunities.\footnote{370}{J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 157.} Next to their independent attitude towards their own government, according to article 100 of the Charter (supra Part II, Chapter II, Section 1), the representatives of Member States and officials of the Organization enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.\footnote{371}{Paragraph 2 article 105 of the Charter.} This clause is restrictive, indicating a limitation of privileges and immunities, to functions performed in an official capacity.\footnote{372}{Ibid. 369.} The provisions of the articles 104 and 105 of the Charter are general by nature and require detailed definition and measures for implementation.\footnote{373}{J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 160.} Thus, the Assembly is competent to make non-binding recommendations concerning the details of the application of the privileges and immunities, or may propose conventions to the Members for this purpose, which latter requires ratification.\footnote{374}{Paragraph 3 article 105 of the Charter.}

**Convention on the Privileges and Immunities of the United Nations**

According to paragraph 3 of article 105 of the Charter, the Assembly has the competence to propose conventions to its Members (supra The UN Charter). The Assembly chose this method regarding the implementation of the provisions of articles 104 and 105 of the Charter, because of its effectiveness (uniformity, precise definitions…) and binding character,\footnote{375}{J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 164-166.} resulting in the adoption of the General Convention on Privileges and Immunities of the United Nations on February 13, 1946.\footnote{376}{Convention on the privileges and immunities of the United Nations, UNTS vol. 90, 327 (further the General Convention).} Currently, the General Convention has 158 Members, of whom several made reservations about some of the provisions.\footnote{377}{Status General Convention, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-1&chapter=3&lang=en, consult on May 10, 2012.} The General Convention established the privileges and immunities of the UN as an organization, the representatives of Members, its officials and experts on missions for the UN in the territory of all Member States.\footnote{378}{Articles II- VI of the General Convention.}
Member States of the UN that have not ratified this convention are still obliged to give effect to paragraphs 1 and 2 of article 105 of the Charter (supra The UN Charter, paragraph 2) in their territory so that the UN, its representatives and officials have the privileges and immunities needed to carry out their functions.  

The General Convention obliges each Member “when an instrument of accession is deposited”, to “be in a position under its own law to give effect to the terms of this convention”. Thus, this provision takes into account that appropriate internal legislation is necessary, to ensure the effectiveness of treaty obligations relating to privileges and immunities. However, because the articles of the Convention have a high level of precision, they are considered directly applicable or self-executing in many national legal systems; meaning that national courts may directly rely on them without the need of national implementing legislation.

United Nations Headquarters Agreement

The UN headquarters is seated on the East side of Manhattan, New York, which is an international zone belonging to all Member States. It is customary to enter into a special agreement with the State on whose territory the international organization has its permanent offices; this agreement, which is a bilateral instrument, is called a “host agreement” or “headquarters agreement”. The United Nations Headquarters Agreement of June 26, 1947, was negotiated to meet this requirement. Primarily, it deals with the position of the organization, but it also regulates the status of the personnel.

The General Convention and the Headquarters Agreement are considered as a whole; they complement each other by defining the status of the UN in the country of its headquarters. This complementary “relationship” is stated in section 26 of the Headquarters Agreement: “The provisions of this agreement shall be complementary to the provisions of the General Convention. In so far as any provision of this agreement and any provisions of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this agreement shall prevail.”

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379 FCCC/KP/CMP/2005/6, 4.
380 Article IX, Section 34 of the General Convention.
381 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 176.
383 Under article I, section 1 of the Headquarters Agreement “headquarters district” means: (1) the area defined as such in Annex I and, (2) any other lands or buildings which from time to time may be included therein by supplemental agreement with the appropriate American authorities.
386 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 162.
387 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 172.
388 Article IX, Section 26 of the Headquarters Agreement.
Also: “Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district.”

But on the other hand, “no federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations […] shall, to the extent of such inconsistency, be applicable within the headquarters district.” Otherwise, this would implicate that the US courts would have jurisdiction over actions and transactions taking place in the Headquarters District. In case of violation of the regulations adopted under the previous section (section 8), or in other cause, the UN may expel or exclude persons from the headquarters district. Section 21(a), in case of a dispute between the UN and the US concerning the interpretation or application of the Agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, it will be referred for final decision to a tribunal of three arbitrators, one assigned by the Secretary-General, one by the Secretary of State of the United States, and the third chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

**Convention on the Privileges and Immunities of the Specialized Agencies**

Paragraph 1 of article 105 of the Charter (supra The United Nations Charter), was meant to apply to all agencies of the UN who were established by the Charter; not included were the agencies brought into relationship with the UN, through application of the articles 57 and 63 of the Charter (being the specialized agencies, supra Part II, Chapter II, Section II).

On November 21, 1947, the Assembly approved the Convention on the Privileges and Immunities of the Specialized Agencies. Currently, the Convention has 118 Members. The Special Convention consists of two parts: the first part is general, defining the privileges and immunities which the Assembly considered necessary for all the specialized agencies, the so-called "standard clauses"; the second part contains annexes, each relating to a particular specialized agency. The “standard clauses” contain roughly the same provisions concerning privileges and immunities as the General Convention, while the second part (annexes) are recommendations to each of the specialized agencies, the aim of which is to consider the particular functions of each agency and to provide privileges required by its functions.

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389 Article III, Section 7 (b) of the Headquarters Agreement, Doc. A/PV/101, 82.
390 Article III, Section 8 of the Headquarters Agreement.
392 Article III, Section 10 of the Headquarters Agreement.
393 Article IX, Section 21(a) of the Headquarters Agreement.
394 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 158.
395 Convention on the Privileges and Immunities of the Specialized Agencies, UNTS vol. 33, 261 (further the Special Convention).
397 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 219.
399 Ibid. 396.
Chapter II: Persons entitled to international privileges and immunities

In the strict sense of the term, the “personnel” of the UN, are the international officials who make up the Secretariat of the Organization. However, there are other individuals who are also affiliated with the UN, enjoying certain prerogatives; e.g. experts on mission, representatives of Members...

The next chapter (III) will elaborate on the different privileges and immunities of UN personnel under the various conventions (supra Chapter I: Legislation).

Chapter III: International privileges and immunities

Section I: The UN itself

Since the UN has juridical personality - meaning the Organization has the capacity to contract, to acquire and dispose of (im)movable property and to institute legal proceedings – it is reasonable that several immunities were assigned to the Organization itself.

Under article III, section 9 of the Headquarters Agreement, the headquarters district is inviolable. This inviolability contains that: (1) officers or officials of the United States can enter the headquarters district to perform official duties and, (2) the seizure of private property in the headquarters district can take place, both only with the consent of and under conditions approved by the Secretary-General.

More provisions about the immunities of the UN itself are to be found in the General Convention. The UN property and its assets enjoy immunity from every form of legal process, except when its immunity has been waived. Next to that, the premises of the UN are immune from “search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action”. Its assets, income and other property are also exempt from all direct taxes and custom duties, prohibitions and restrictions on imports and exports, by the UN for its official use. Furthermore, the archives and all documents belonging to the UN, are inviolable wherever they are. Finally, the UN enjoys in the territory of each Member for its official communications, a treatment that is not less favourable than the one who is accorded by the Government of that Member to any other Government. The Organization has the right to use codes and to dispatch and receive its correspondence by courier or in bags, which enjoy the same immunities as diplomatic couriers and bags (supra Part I, Chapter III, Section I, Persons entitled to privileges and immunities).

400 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 185.
401 Article I of the General Convention.
402 Article III, Section 9 of the Headquarters Agreement.
403 Article II, Section 2 of the General Convention.
404 Article II, Section 3 of the General Convention.
405 Article II, Section 7 of the General Convention.
406 Article II, Section 4 of the General Convention.
407 Article III, Section 9 of the General Convention.
408 Article III, Section 10 of the General Convention.
Section II: The representatives of Member States

Under the General Convention, the term “representatives” includes “all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.” Together, they form a national delegation, representing the interests of a particular state at the UN. The immunities assigned to the representatives of Members are, according to article 105 of the UN Charter, necessary to ensure the independent exercise of their functions (supra Chapter I, The UN Charter). This requirement was interpreted by the drafters of the General Convention to be the equivalent of the diplomatic privileges and immunities.

The representatives of Members to the principal and subsidiary organs of the UN and to conferences convened by the Organization enjoy the following privileges and immunities:

“(a) immunity from personal arrest of detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
(b) inviolability for all papers and documents;
(c) the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(d) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also
(g) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (other than as part of their personal baggage) or from excise duties or sales taxes.”

They enjoy these privileges and immunities “while exercising their functions and during their journey to and from the place of meeting.”

In order to secure the representatives’ complete freedom of speech and independence in the discharge of their duties, their immunity from legal process in respect of words spoken or written (supra (a)) is continuously granted, even when they are no longer representatives of Members. There a two specific restrictions: first, the representatives have no right to claim exemption from customs duties on goods imported (other than personal baggage); and second, the previous provisions (section 11 and 12) are not applicable between a representative and the State of which he is a national or of which he is or has been a representative.

409 Article IV, Section 16 of the General Convention.
410 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 207.
411 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 209.
412 Article IV, Section 11 of the General Convention.
413 Ibid. 411.
414 Article IV, Section 12 of the General Convention.
415 Article IV, Section 11 (g) of the General Convention.
416 Article IV, Section 15 of the General Convention.
The previous mentioned privileges and immunities are granted to the representatives of Members not for their personal benefit, but in order to ensure the independent exercise of their functions in connection with the UN. Therefore, a Member is obliged to waive the immunity of its representative in any case, when in the opinion of the Member the immunity would impede the course of justice. According to King, this provision is more a moral than legal duty, since its fulfillment is left to the single judgment of the Member.

Pay attention to section 13 of the Headquarters Agreement, which gives the US government the right to require a representative of a Member to leave the territory in case of abuse of such privileges in matters outside his official capacity.

Section III: Personnel of the UN

As stated earlier (supra Chapter II), the personnel of the UN is consisted of many individuals. First to discuss is the status of the officials of the Organization, next are the high officials of the UN, and finally the experts on mission for the UN.

Officials of the UN

The provisions concerning the status of the officials of the UN, are to be found in the General Convention. It was the Secretary-General’s duty to specify the categories of officials to which the provisions of article V of the General Convention would apply. The proposal of the Secretary-General was approved by the Assembly at its 50th plenary meeting: “Having considered the proposal of the Secretary-General that [...] the categories of officials to which the provisions of Article V and VII shall apply should include all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates”.

Thus, an “official” is an employee not recruited locally and not paid hourly rates.

UN officials shall: 
(a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
(c) be immune from national service obligations;
(d) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
(e) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

417 Article IV, Section 14 of the General Convention.
418 Article IV, Section 14 of the General Convention.
419 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 209.
421 Classification used by J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 185 and further.
422 Article V, Section 17 of the General Convention.
423 Privileges and Immunities of the Staff of the Secretariat of the United Nations, A/RES/76(I), 1946, 139.
(f) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
(g) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question”. 424

Hence, the UN officials are immune for official acts, except when their immunity is waived, and they do not enjoy immunity for private acts. With regard to the latter, local courts stay competent. 425 Concerning the tax exemptions: the reason for this principle, is to maintain the principle of equal pay for equal work among the staff members. 426 The immunity from national service obligations follows logically out of the necessity of continuous functioning of the Organization, to ensure an uninterrupted availability of competent personnel for its staff. 427 Also required from the point of view of functional necessity, is the exemption from immigration restrictions and alien registration; an international official is not independent from the local authority if he is subject to entrance and exit restrictions in the country where he is called to carry out his functions. 428

The UN conducts itself as if it was a nation state, and treats its staff as if they were UN citizens; so the UN issues its staff a passport, namely a “United Nations Laissez- Passer” (further UN/LP). 429 According to article VII of the General Convention, the UN can issue UN laissez- passers to its officials, which are accepted as valid travel documents by the authorities of Members. 430 But today, many countries around the world refuse to recognize the UN/LP as a valid travel document, so that the bearers of a UN/LP are often asked to also present their national passport before entering a country. 431 If a visa is required and when accompanied by a certificate that they are travelling on the business of the UN, the application for the visa will be dealt with as speedily as possible. 432

Again, the privileges and immunities are granted to officials not for their personal benefit, but in the interest of the UN. The Secretary- General has the right and duty to waive the immunity of any official, when the immunity would impede the course of justice. In case of the Secretary- General, it is the Security Council who has the right to waive immunity. 433

As in case of representatives of Member States (supra Section II), section 13 of the Headquarters Agreement is also applicable to UN officials, giving the US government the right to require an official to leave the territory in case of abuse of such privileges in matters outside his official capacity. 434

424 Article V, Section 18 of the General Convention.
425 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 189.
426 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 191.
427 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 196.
428 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 199.
430 Article VII, Section 24 of the General Convention.
432 Article VII, Section 25 of the General Convention.
433 Article V, Section 21 of the General Convention.
High officials of the UN

Next to the privileges and immunities enumerated in section 18 of article V (supra Officials of the UN), the Secretary-General and the Assistant Secretary-General are accorded “the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law”, which also apply to their spouses and minor children.  
In their case, there is no distinction between private and official acts.

Experts on mission for the United Nations

The term “expert on mission for the UN” has no precise definition. In the UN practice, any person who is entrusted to perform a specific and important task for the UN is classified as an “expert on mission”, as long as they are neither a staff member (UN official) nor a representative of a Member State.

Another definition is found in the UNTERM database: “Experts on mission” include United Nations military observers, police and civilians and others who are afforded the status of an expert on mission. These categories may include, inter alia, military observers, military liaison officers, military advisers, arms monitors, members of formed police units, seconded individual United Nations police and seconded corrections officers.

Article VI of the General Convention describes the privileges and immunities of experts on mission for the UN. The article makes a distinction between “officials of the organization” and “experts (other than officials coming within the scope of article V)”. However, experience has shown that this distinction between “officials”, “experts” and “representatives of Members” was not always clear. Thus, in 1948, the Advisory Committee on Budgetary Questions recommended that: “each organ, within the limits of its own jurisdiction, should define the character of any new commission or committee, that is, whether composed of members serving in an individual capacity or of representatives designated by Member Governments”.

Experts on mission may be recruited by means of a contract known as a “consultant contract”, which sets out the terms of their appointment and the tasks that they must discharge. It is however possible for an individual to have the status of expert on mission, even though he/she did not sign a consultant contract, if designated by the UN organs to carry out a mission or function for the UN, e.g. a rapporteur of the Commission on Human Rights. Thus, there are two ways to recruit experts on mission for the UN.

435 Article V, Section 19 of the General Convention.  
436 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 199.  
439 Article VI, Section 22 of the General Convention.  
440 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 203.  
The experts on mission are accorded such privileges and immunities “as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions”, in particular:

“(a) immunity from personal arrest or detention and from seizure of their personal baggage;
(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
(c) inviolability for all papers and documents;
(d) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
(e) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
(f) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.443

Section 26 of article VI of the General Convention provides that similar facilities to those specified in section 25 – concerning applications for visas and facilities for speedy travel – will be accorded to experts and other persons who are travelling on the business of the UN.444

The previous privileges and immunities are conferred to experts in the interests of the UN and not for the personal benefit of the individuals themselves.445 They do not supply an excuse to those who are covered by them, to fail to obey the laws and police regulations of the State in which they are located; nor do they furnish an excuse for non-performance of their private obligations.446 Once again, the Secretary-General has the right and the duty to waive the immunity of any expert in any case, when the immunity would impede the course of justice.447

Section IV: Permanent delegations to the United Nations448

The privileges and immunities of permanent delegations or resident representatives to the UN are stated in the Headquarters Agreement, article V.449 Under the term “resident representatives” are included: “Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary; such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned; and every person designated by a Member of a specialized agency, as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States”.450

443 Article VI, Section 22 of the General Convention.
444 Article VII, Section 25 and 26 of the General Convention.
445 Article VI, Section 23 of the General Convention.
446 ST/SGB/2002/9, 3.
447 Ibid. 444.
448 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 215.
449 Article V of the Headquarters Agreement.
450 Article V, Section 15 (1) - (3) of the Headquarters Agreement.
These resident representatives are granted in the United States territory, whether residing inside or outside the headquarters district, “the same privileges and immunities, subject to corresponding conditions and obligations, as it (read the sending State) accords to diplomatic envos accredited to it”. In the case of Member States whose governments are not recognized by the United States, these privileges and immunities need to be extended only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries.

Section V: The specialized agencies

The provisions regarding the privileges and immunities of the specialized agencies of the UN are laid down in the Special Convention (supra Chapter I: Legislation, Convention on the Privileges and Immunities of the Specialized Agencies of 1947). The Convention aims to unify as far as possible, the privileges and immunities enjoyed by the specialized agencies. However, the provisions in this Convention do not limit the conclusion of special arrangements - and the privileges and immunities accompanying them - between the various agencies and states in whose territories their headquarters or regional offices are located, which adjust the provisions of the Special Convention by expanding or reducing them. Each Member to this Convention has to accord to any specialized agency, to which this Convention is applicable, the privileges and immunities set forth in the standard clauses (supra Chapter I: Legislation, Convention on the Privileges and Immunities of the Specialized Agencies of 1947) on the conditions specified therein, and subject to modification of those clauses contained in the provisions of the annex relating to that agency. Because the agencies are “brought into relation” with the UN, the legal basis for the status of the personnel of the staffs of the specialized agencies arises from the provisions in their constitutions, and not from article 105 of the Charter. But since this would be to exhaustive, this section is limited to the Special Convention provisions. Following the classification of the Special Convention, it is wise to divide the privileges and immunities into those of the specialized agencies themselves, the representatives of members and the officials.

The specialized agencies

The specialized agencies possess juridical personality, they have the capacity to contract, to acquire and dispose of (im)movable property and to institute legal proceedings. The agencies themselves, their property and assets enjoy immunity from every form of legal process, except when they have expressly waived their immunity; but the waiver of immunity does not extend to any measure of execution.

451 Article V, Section 15 (4) of the Headquarters Agreement.
452 Article V, Section 15 (4) of the Headquarters Agreement.
454 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 222 and Article X, Section 39 of the Special Convention.
455 Article I, Section 2 of the Special Convention.
456 J. K. KING, The privileges and immunities of the personnel of international organizations, Denmark, Strandberg Bogtryk, 1949, 221.
457 Article II, Section 3 of the Special Convention.
458 Article III, Section 4 of the Special Convention.
Moreover, their property and assets are immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. The premises, archives, and in general all documents belonging to the agencies are also inviolable.

The agencies, their assets, income and other property are:

“(a) Exempt from all direct taxes: it is understood, however, that the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
(b) Exempt from custom duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;
(c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of their publications”.

Finally, regarding its official communications, each specialized agency enjoys in the territory of each Member, a treatment not less favourable than that accorded by the Authorities of such Member to any other Government. Another facility in respect of communications is the right to use codes and to dispatch and receive correspondence by courier or in sealed bags. Nevertheless, State parties have the possibility to adopt appropriate security precautions by agreement with a specialized agency.

**Representatives of Members**

The representatives of Members at meetings convened by a specialized agency, enjoy the following privileges and immunities, while exercising their functions and during their journeys to and from the place of meeting:

“(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
(b) Inviolability for all papers and documents;
(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
(d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;
(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
(f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions”.

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459 Article III, Section 5 of the Special Convention.
460 Article III, Section 5 and 6 of the Special Convention.
461 Article III, Section 9 of the Special Convention.
462 Article IV, Section 11 of the Special Convention.
463 Article IV, Section 12 of the Special Convention.
464 Article V, Section 13 of the Special Convention.
The immunity from legal process (supra (a)) is continued to be accorded, notwithstanding that the person concerned is no longer performing his/her duties, in order to secure them complete freedom of speech and complete independence in the discharge of their duties.\textsuperscript{465} The latter two provisions (Section 13 and 14) are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.\textsuperscript{466}

Once again, these privileges and immunities are granted to the representatives of members to safeguard the independent exercise of their functions in connection with the agencies, not for their personal benefit. In any case where the immunity would impede the course of justice, a Member has the duty to waive the immunity of its representative.\textsuperscript{467}

**Officials**

First of all, each specialized agency has to specify the categories of officials to which the provisions of articles VI and VII of the Special Convention will be applicable, and communicate them to the Governments of all Members and to the Secretary-General.\textsuperscript{468} Regardless the exemption from national service obligations\textsuperscript{469}, officials of the specialized agencies:

(a) Are immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
(b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations;
(c) Are immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
(d) Are accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
(e) Are given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions;
(f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.\textsuperscript{470}

In addition to these privileges and immunities, the executive head of each agency (or an official acting on his behalf during his absence from duty) is accorded the privileges and immunities, exemptions and facilities accorded to diplomatic envoys. They are also accorded to his spouse and minor children.\textsuperscript{471}

Once more, these privileges and immunities are granted to officials in the interests of the specialized agencies; and each agency has the duty to waive the immunity of any official, when the immunity would impede the course of justice.\textsuperscript{472}

\textsuperscript{465} Article V, Section 14 of the Special Convention.
\textsuperscript{466} Article V, Section 17 of the Special Convention.
\textsuperscript{467} Article V, Section 16 of the Special Convention.
\textsuperscript{468} Article VI, Section 18 of the Special Convention.
\textsuperscript{469} Article VI, Section 20 of the Special Convention.
\textsuperscript{470} Article VI, Section 19 of the Special Convention.
\textsuperscript{471} Article VI, Section 21 of the Special Convention.
\textsuperscript{472} Article VI, Section 22 of the Special Convention.
Chapter IV: Conclusion

The sources of international immunities, and specific those of the UN, are primarily conventional (supra Chapter I: Legislation). Since this is an extensive matter, only the most important conventions are discussed; being the UN Charter, the Convention on Privileges and Immunities of the UN (General Convention), the UN Headquarters Agreement and the Convention on Privileges and Immunities of the Specialized Agencies (Special Convention).

The UN Charter is of major importance because it clearly states the principle of “functional” immunity. According to its article 105, the organization has to enjoy privileges and immunities necessary for the fulfillment of its purposes. This principle of functionality can also be derived from regulations in the other mentioned conventions (infra).

The General Convention of 1946 established the privileges and immunities of the UN as an organization, the representatives of Members, its officials and experts on mission. The assigned immunities to the UN itself, to representatives of Member States, to UN officials and to experts on mission for the UN are similar to those assigned to diplomatic missions: immunity from legal process, immunity of the premises, inviolability of all papers and documents…473 It is explicitly stated that all these privileges and immunities are granted to these persons, not for their personal benefit, but in order to ensure the independent exercise of their functions in connection with the UN (supra functionality).474 The regime of these granted privileges and immunities reflects two prominent principles: (1) protection of those implementing the decisions of the UN and its organs, and (2) protection of third party claimants by obligating the UN, if the immunity of an official or expert on mission is not waived, to provide a mechanism for the final and binding resolution of the dispute.475 Consequently, there is a jurisdictional immunity from national courts.

Specific for international organizations is the “host or headquarters agreement”. Since the UN has no territory of its own (like any other international organization), this special agreement was negotiated between the UN and the State on whose territory the UN has its permanent offices (being the US) in 1947. It contains provisions concerning the law and authority in the headquarters district (inviolability inter alia), privileges and immunities of permanent delegations to the UN, communications and transit…

Last, but not the least important, is the Special Convention of 1947 concerning the privileges and immunities of the specialized agencies. This convention comprises two parts: the first is general, defining the privileges and immunities that apply to all specialized agencies (“standard clauses”); the second part (annexes), are recommendations to each of the specialized agencies, considering the particular functions of each agency. Since the statute of the staff of the specialized agencies is to be found in their constitutions, it was not possible to enumerate these provisions. The standard clauses in the Special Convention are similar to those in the General Convention (immunity from legal process, exemption from direct taxes, inviolability for all papers and documents…).476

473 Article II, Section 2 and 3; Article IV; Article V, Section 18 of the General Convention.
474 Article IV, Section 14; Article V, Section 20; Article VI, Section 23 of the General Convention.
475 FCCC/KP/CMP/2005/6, 4.
476 Article III, Section 9; Article V, Section 13; Article VI, Section 19 of the Special Convention.
Again, these privileges and immunities are granted to the representatives of Members and to officials of the agencies to safeguard the independent exercise of their functions in connection with the agencies, and not for their personal benefit (*supra* functionality). 477

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477 Article V, Section 16; Article VI, Section 22 of the Special Convention.
Part IV: Immunities of members of expert panels with the UN and related bodies

Chapter I: Problem statement

Experts on mission for the UN can be retained through a consultant contract or through designation by the UN organs. They are accorded privileges and immunities which are necessary for the independent exercise of their functions during the period of their missions (supra Part III, Chapter III, Section III: Experts on mission for the United Nations). But what with the experts who are excluded from the scope of the General Convention? Which privileges and immunities should they be conferred to enable them to perform their official functions? This is a very important matter since these experts have the right and/or duty to take decisions that may harm Member States, public and/or private legal entities, and therefore they should be protected to a certain extent. The issue will be discussed extensively in Chapter III.

Chapter II: Statute of the experts on mission for the UN

The responsibilities of experts on mission are exclusively international, which is also explicitly stated in the written declaration they have to make: “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 to seek or accept instructions in regard to the performance of my duties from any Government or other source external to the Organization”. The experts have to conduct themselves at all times in a manner befitting their status, meaning that they cannot engage themselves in any activity that is incompatible with the proper discharge of their duties with the UN, and they have to avoid any action or public pronouncement that may adversely reflect on their status or on the integrity, independence and impartiality that are required by that status. Utmost discretion regarding all matters of official business is another important conduct; no communication with any Government/ entity or person, except when appropriate in the normal course of their duties or by authorization of the Secretary- General.

The pecuniary aspect is very interesting, first of all because they are considered persons whose services are accepted on a “non-reimbursable loan”. A non-reimbursable loan is defined as “a loan of the services of an individual without any cost to the United Nations for his or her salary or remuneration, allowances, medical, dental and life insurance or other benefits”.

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482 Ibid. 481.
However, in case of death, injury or illness attributable to the performance of services on behalf of the UN while on travel or while working at an office of or other location designated by the Organization, the UN will pay to the individual under a non-reimbursable loan, or to his or her beneficiaries, a compensation equivalent to the compensation that would be payable under Appendix D to the Staff Rules of the UN, to a staff member performing similar functions.\(^\text{483}\) Secondly, the experts may not accept any honour, decoration, favour, gift or remuneration from any Governmental or non-governmental source for activities carried out during the course of their official functions while in the service of the UN.\(^\text{484}\) It is also prohibited for them to hold a financial interest in or to be actively associated with the management of any profit-making business.\(^\text{485}\) Finally, when experts participate as part of their official functions, in activities organized by a Government, intergovernmental organization, non-governmental organization or other private source, they may receive accommodation, travel and subsistence allowance from them, generally in line with those payable by the UN.\(^\text{486}\)

Experts on mission are accountable to the UN for the proper discharge of their functions, the method of accountability however may vary. In this case, it is the Secretary-General or the appointing authority who can terminate an assignment or admonish the expert.\(^\text{487}\) On the 27\(^{\text{th}}\) of October 2011, a draft resolution (a resolution that has not yet been voted on) by the Assembly emphasized the need to enhance international cooperation to ensure the criminal accountability of UN officials and experts on mission, and strongly urged States to take all appropriate measures to ensure that crimes by UN officials and experts on mission do not go unpunished and that the perpetrators of such crimes are brought to justice, without prejudice to the privileges and immunities of such persons and the UN under international law, [...].\(^\text{488}\)

**Chapter III: Case study: The UNFCCC and Kyoto Protocol**

**Section I: Introduction**

Continuing with the climate change conferences, this case study is going to deal with the privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol (the Executive Board of the CDM, the JI SC, the Compliance Committee and the ERT’s); or should I say the lack of privileges and immunities for those members, since the Convention and the Protocol do not contain any provisions conferring privileges and immunities on their organs or on officials and representatives serving in these organs.\(^\text{489}\) The purpose of these privileges and immunities is to ensure the effective implementation of the Kyoto Protocol without interference from national courts and to provide effective protection for all individuals selected to carry out official functions under the Protocol.\(^\text{490}\)

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\(^{483}\) UN Secretariat: Non-reimbursable loans of personnel services from sources external to the united nations common system, ST/Al/231/Rev.1, 23 January 1991, 2.

\(^{484}\) Ibid. 482.

\(^{485}\) Ibid. 482.

\(^{486}\) ST/SGB/2002/9, 5.

\(^{487}\) ST/SGB/2002/9, 15.


\(^{489}\) FCCC/KP/CMP/2005/6, 4.

\(^{490}\) N. WILLIAMS (UNFCCC Secretariat), Second Review of the Kyoto Protocol under Article 9, 4.
The procedures for dispute resolution or settlement are related to the privileges and immunities, which review and resolve disputes or claims by private entities against individuals serving on constituted bodies.

First some recurring definitions: “Secretariat” means the Secretariat established by article 8 of the Convention, “Executive Secretary” means Executive Secretary of the UNFCCC Secretariat and the expression “individuals serving on constituted bodies under the Kyoto Protocol” includes members, alternates and experts of the CDM Executive Board, the JI SC, the Compliance Committee, as well as members and experts of the ERT’s.\textsuperscript{491}

\textbf{Section II: Document analysis}

In order to come to a solution for the problem (\textit{supra} Chapter I), a document analysis is needed. The examined documents are documents from the CMP and the SBI (notes by the Secretariat), and position papers from the EU. The overall objectives of these documents are: (1) to ensure the effective functioning of the Kyoto Protocol bodies (CDM Executive Board (CDM EB), JI Supervisory Committee (JI SC), Compliance Committee and the Expert Review Teams (ERT’s)); (2) to underline that members, alternates and experts of constituted bodies should be effectively protected from compensations claims when taking decisions for which they have been mandated; (3) to ensure that potential members of the constituted bodies are not deterred from standing for election for fear of incurring liability; (4) to ensure that a practical and effective solution is reached; (5) to avoid a solution that would have a negative impact on similar situations under other treaties, \textit{i.e.} that specific systems have to be established for each treaty; (6) to avoid the escalation of the risk of claims; and (7) to avoid a solution that would have adverse impacts on the function of the flexible mechanisms.\textsuperscript{492} The decisions of constituted bodies under the Protocol – the CDM EB and the JI SC – have a direct impact on investment decisions by the public and private sectors worldwide.\textsuperscript{493} The decisions and activities of the Compliance Committee may also affect Parties, as well as private and public entities; in particular the enforcement branch, which has the power to determine the consequences for Parties not meeting their commitments, including their eligibility to continue participating in the Kyoto mechanisms.\textsuperscript{494} Possible claims that could be raised are: breach of confidentiality, possible conflict of interest, violation of procedural rights, acting outside of the delegated authority…\textsuperscript{495} In this section, the documents are classified according to which body (CMP or SBI) considered the documents, and subsequently in chronological order.

\textsuperscript{491} SBI 26, Views on privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, \textit{FCCC/SBI/2007/MISC.4/Add.2}, 3.
\textsuperscript{492} Draft EU position paper, \textit{LEX_PP_171006}, 2-3 (further \textit{LEX_PP_171006}).
\textsuperscript{493} SBI 25, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, \textit{FCCC/SBI/2006/21}, 5 (further \textit{FCCC/SBI/2006/21}).
\textsuperscript{494} \textit{FCCC/SBI/2006/21}, 5.
\textsuperscript{495} N. WILLIAMS (UNFCCC Secretariat), \textit{Second Review of the Kyoto Protocol under Article 9}, 11 and \textit{FCCC/SBI/2006/21}, 6.
Documents from the Conference of the Parties serving as Meeting of the Parties to the Protocol (CMP)

Under article 9 of the Protocol, the CMP (COP serving as MOP) “shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information”. Based on these reviews, the CMP will then take appropriate action.\(^{496}\)

**CMP 1**

Since CMP 1 – which took place from November 28 to December 9, 2005 in Montreal, Canada – Parties are considering: (1) which privileges and immunities to confer to individuals serving on constituted bodies to enable them to perform their official functions, (2) how to confer these privileges and immunities, and (3) what mechanisms or procedures to establish to review and resolve disputes or claims by private entities against individuals serving on constituted bodies. The reason for these considerations is the report of the CDM Executive Board to the CMP, at its first session, expressing concern about the absence of privileges and immunities for its members and the impact this may have on the functioning of the CDM. The CDM EB requested the CMP to consider this issue and take steps to find a solution.\(^{497}\)

A note prepared by the Secretariat discussed the regime of privileges and immunities in the context of the Convention and the Protocol. As mentioned earlier, both the Convention and the Protocol do not contain any provisions conferring privileges and immunities on anyone (\(^{supra}\) Section I). However, on June 20, 1996, the UN, the Federal Government of Germany and the Secretariat concluded a Headquarters Agreement for the Convention Secretariat, which was approved by the COP in decision 15/CP.2.\(^{498}\) This agreement contains the arrangements for the hosting of the Secretariat in Bonn (Germany), granting to officials and representatives to the COP the same privileges and immunities that are granted to UN officials and representatives of Members to the UN under the General Convention.\(^{499}\) It also provides that “all persons invited to participate in the official business of the Convention shall enjoy immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity” and that they are accorded “inviolability for all papers and documents” and that such “immunity shall continue to be accorded after termination of their business”.\(^{500}\) In return for these privileges and immunities, the Secretariat is obliged to make provisions for the appropriate settlement of disputes arising out of contracts to which is it party, and disputes involving an official of the Secretariat that enjoys immunity which has not been waived.\(^{501}\) The Headquarters Agreement was amended on December 7, 2005 to reflect that the Convention secretariat also serves as the Secretariat of the Kyoto Protocol; the amendment was approved by the COP in decision 8/CP.12.\(^{502}\)

\(^{496}\) Paragraph 1 article 9 of the Protocol.

\(^{497}\) FCCC/KP/CMP/2005/6, 3.


\(^{499}\) FCCC/KP/CMP/2005/6, 4.

\(^{500}\) Article 5 of the Headquarters Agreement UNFCCC, FCCC/CP/1996/MISC.1, 8.

\(^{501}\) FCCC/KP/CMP/2005/6, 5.

\(^{502}\) Ibid. 498.
Summarized: **in Germany**, the regime of the General Convention is made applicable to the activities of the Convention and its organs, except that the detailed regime for experts on mission in the General Convention is replaced by the more general provision of article 5.\(^{503}\)

Because the Headquarters Agreement is limited to the territory of Germany, the Secretariat enters into conference agreements with other States that host meetings of the COP, CMP or other bodies. These agreements are based on the UN conference agreement-model and ensure that the detailed regime of privileges and immunities in the General Convention is applicable to all who attend meetings arranged by the Convention or the Protocol; also extending this regime to observers, to others invited to attend meetings and to personnel provided by Governments for meeting services. They provide unimpeded access to and departure from the meeting venue, ensure that the host government is responsible for third-party claims that may arise, and provide mechanisms for the effective settlement of disputes.\(^{504}\) Applied to the constituted bodies of the Protocol: the members and alternates of the CDM EB, JI SC, Compliance Committee and members of ERT’s have privileges and immunities when they are in Germany or while they are exercising functions in connection with meetings covered by a conference agreement, the latter if drafted broadly enough to encompass their activities. Beware, the activities of the Protocol may affect third parties elsewhere, in which case the members of constituted bodies will have no protection against claims made against them in their personal capacity.\(^{505}\)

**CMP 2**

A draft decision by CMP 2 – which took place from November 6 to 17, 2006 in Nairobi (Kenya) – invited the UN Secretary-General to consider whether individuals serving on bodies established under the Protocol are entitled to immunity provided in the General Convention. It also requested the Secretary-General to inform the CMP of his findings.\(^{506}\) Regarding the legal argumentation on privileges and immunities of members of constituted bodies, the following argumentation was used by Mr. Gerhard Loibl (member of the Compliance Committee, enforcement branch): the Protocol is a treaty which provides that a number of constituted bodies are to be set up for its operations. The mandate that is given to these bodies, is defined in decisions of the COP and the CMP. Members of these bodies are elected by the CMP, and the constituted bodies themselves are subject to the authority of the CMP. It is the constituted body as such which takes decisions within its respective mandate as an organ; individual members participate in these decisions as set out in the relevant procedures. Nonetheless, it is a general rule of international law that institutions, set up by treaties and given a mandate to undertake certain activities, enjoy privileges and immunities for these activities.\(^{507}\)

\(^{503}\) FCCC/KP/CMP/2005/6, 5.

\(^{504}\) Ibid. 503.

\(^{505}\) FCCC/KP/CMP/2005/6, 7-9.

\(^{506}\) CMP 2, Draft decision on privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, X, 2006, 1.

\(^{507}\) CMP 2, Draft decision on privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, X, 2006, 2.
On July 30, 2007, the Secretariat published a technical paper, providing information on the legal regime and practice concerning privileges and immunities for individuals serving on different bodies of organizations (55) in the UN system. This paper was made in order to assist Parties in their consideration of the issues concerning privileges and immunities for individuals serving on bodies established under the Protocol. The responses revealed that the questioned organizations perform their mandated functions through three main types of bodies: governing or supervisory; advisory or expert; and adjudicatory. Important are the advisory or expert bodies, which vary widely in the manner they are constituted and the capacity in which their members serve. However, most of them tend to serve in a personal capacity. The way they are established is varied, from constitution by a governing or subsidiary body, to constitution by the secretariat of the organization. A few organizations described specialized adjudicatory bodies in their response, established to resolve disputes that might arise between Members or, between the organization and private entities. Again, most of them serving in their personal capacity and subjected to rules of conduct.

Next in line to be discussed in the paper, was the legal framework on privileges and immunities. Another distinction could be made: organizations that apply the UN conventions concerning privileges and immunities; organizations with separate agreements on privileges and immunities; and the environmental bodies. The UN system of privileges and immunities is conferred by its constituent instruments: the General Convention and the Special Convention, applicable to the UN, its subsidiary bodies and the specialized agencies (supra Part III, Chapter I and III). When a meeting or event takes place in a host State, away from the established headquarters of the body concerned, a host country agreement is signed to cover the meeting or event. The conclusion of such an agreement ensures that the regime of the General Convention applies, even if the host State has not ratified it. A number of organizations do not enjoy the regime in the previous mentioned UN Conventions, but have privileges and immunities in their constitutive instruments, supplemented by multilateral agreements; both containing a similar regime to those in the UN Conventions. The last ones are the environmental bodies, including the UNFCCC and its Kyoto Protocol. Because their constitutive instruments do not provide privileges and immunities, these entities solely rely on headquarters agreements and host country agreements (which are based on the General Convention). The difficulty is that this regime only applies at their headquarters and in States that have signed host country agreements. For staff of these entities, the problem is lessened since they tend to have UN appointments, which makes them UN officials who enjoy the protection of the General Convention.

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508 Secretariat, 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, FCCC/TP/2007/2, 3 (further FCCC/TP/2007/2).
509 FCCC/TP/2007/2, 4.
510 FCCC/TP/2007/2, 5.
511 Ibid. 510.
512 FCCC/TP/2007/2, 6.
513 FCCC/TP/2007/2, 7-10.
514 FCCC/TP/2007/2, 8.
515 Ibid. 514.
The final issue covered in the paper, were the arrangements for settling disputes. The UN established an elaborate system of procedures to deal with its responsibility to address third-party claims and to provide appropriate means for dispute settlement. When a claim is made against an official or an expert regarding actions they took in the course of their official duties, the claim must be made against the UN itself so that it can be settled in accordance with the anticipated procedures. But when the official or experts is sued personally, the Secretary-General will assert immunity. Nevertheless, when the acts were private, unrelated to their official duties, the Secretary-General will normally waive immunity; this means that he permits the official or expert to be sued personally. In case of specialized agencies, disputes are dealt with on an ad hoc basis through negotiation. Other organizations and entities described basic arrangements for dispute settlement similar to those in the General and Special Convention, this because of the variety of claims that can arise.

**CMP 3**

CMP 2 adopted decision 9/CMP.2, in which the Executive Secretary was requested to take a number of actions in response to concerns and issued raised by private or public legal entities involved in the mechanisms established under the Protocol, to minimize the risks of disputes and claims against individuals serving on constituted bodies. Item 17 of the provisional agenda of CMP 3 – which took place from December 3 to December 14, 2007 – is the report on the actions taken by the Secretary-General.

Regarding the actions taken to minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies under the Protocol: (1) the Executive Secretary has recruited a qualified staff, to ensure that the Secretariat continues to provide high-quality support to the constituted bodies, including a Legal Officer who provides legal support to the CDM EB and the JI SC; (2) a training program was designed, in which all experts wishing to participate as a member of an ERT are required to complete the online course and pass an examination, the latter conducted by the Secretariat; and (3) meetings of the constituted bodies, convened in 2007, were held in Bonn (the seat of the Secretariat), so that the individuals serving on these bodies had privileges and immunities in accordance with the Headquarters Agreement of the Secretariat (supra CMP 1, paragraph 2).

Concerning actions taken in response to concerns or issued raised by private or public legal entities with regard to project activities under the CDM. During the period October 2006-August 2007, the Executive Secretary received 12 letters addressed to the CDM EB from private legal entities. Some letters stated that as a result of the decisions of the CDM EB, they had suffered losses amounting to several million euros, as well as damage to their reputation due to negative publicity. The Executive Secretary forwarded the letters to the Executive Board for consideration, together with an analysis of the issued raised and a recommendation on how the (Chair of the) Board should proceed.

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518 FCCC/TP/2007/2, 10.
519 FCCC/TP/2007/2, 11.
520 FCCC/TP/2007/2, 11.
521 Ibid. 520.
522 Ibid. 520.
523 CMP 3, Privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol, FCCC/KP/2007/2, 3 (further FCCC/KP/2007/2).
 Afterwards, the Secretariat – on behalf of the Chair of the CDM EB – sent letters to each entity to clarify the Board’s decisions, provide an update on actions taken by the Board and/or recommend that the project activity be re-submitted for consideration by the Board.\textsuperscript{525}

Conclusion: the support provided by the Secretariat helps to ensure that the work and decisions of the constituted bodies continue to be of high quality and in accordance with the modalities, procedures and guidelines adopted by the CMP; however, these actions do not address the underlying issue of immunities for the individuals serving on constituted bodies.\textsuperscript{526}

**Documents from the Subsidiary Body for Implementation (SBI)**

As a subsidiary body, the SBI gives advice to the COP and CMP on all matters concerning the implementation of the Convention. Thus, the documents of its sessions are another important source of analysis.

**Draft EU position paper**

On October 17, 2006, the EU drafted a position paper on privileges and immunities for individuals serving on constituted bodies, to be considered at SBI 25/ CMP 2. A position paper is an essay that presents an opinion about an issue, in this case the EU about the situation on privileges and immunities. The EU considers that the risk of claims against these individuals is possibly not as great as some other may consider, it recognizes however that this potential risk to be sued before national courts exists. Therefore, a practical and effective solution has to be found.\textsuperscript{527} Bottom lines of this position paper: (1) the EU considers that legal claims against members of constituted bodies are unlikely to be successful, but the possibility should be acknowledged; (2) the constituted bodies and their decisions derive their authority from the CMP and their members are operating within the framework of the Protocol, fulfilling specific functions given to them by the CMP; and (3) the EU is not willing to accept any decision that would set a negative precedent for other treaties.\textsuperscript{528} In the paper, the EU also sets forward some objectives for SBI 25 (e.g. to reach agreement on how to best ensure the protection of members of constituted bodies, to keep the focus in discussions mainly on the immunities).\textsuperscript{529}

At the same time, a statement was made by Finland on behalf of the European Community and its Member States, stating that “the EU is of the opinion that we should make progress on establishing short-term measures” (for instance, the reporting of third party claims against Kyoto officials to the Executive Secretary infra), and that long-term solutions are likely to be reached “only in connection with wider discussion on the post 2012 arrangements”\textsuperscript{530}.

\textsuperscript{525} FCCC/KP/2007/2, 5.
\textsuperscript{526} FCCC/KP/2007/2, 6.
\textsuperscript{527} LEX_PP_171006, 1.
\textsuperscript{528} LEX_PP_171006, 3.
\textsuperscript{529} Ibid. 528.
\textsuperscript{530} “Post 2012 arrangements”: the period after the first ”commitment period” of the Kyoto Protocol, which is due to expire at the end of 2012.
\textsuperscript{531} Statement by Finland on behalf of the European Community and its Member States, 2006.
Since this document mainly deals with solutions to the problem of privileges and immunities, it will be further discussed in Section III (infra). However, in important difference is made between who the complainant or the claimant is when a complaint or claim is made against an individual serving on constituted bodies. Parties to the Protocol are provided with procedures and means of appeal (rights and tools in the Protocol, and procedures provided in CMP decisions) to defend themselves whenever they consider a decision of a constituted body to be flawed and unjustified; it is unlikely that Parties would file claims in national courts against individuals serving on constituted bodies. They can also bring complaints to the CMP directly, e.g. during the discussion of the report of the constituted body.\(^5\)

On the other hand, private and/or public entities, affected by decisions of a constituted body currently have no means or procedures to raise their dispute, complaints or claims. This absence of formal procedures increases the risk that such entities will raise complaints, contest decisions or seek redress in national courts.\(^5\) Solutions (e.g. formal consent or declaration) will be discussed in Section III.

At its 26\(^{th}\) session in Bonn – from May 7 to May 18, 2007 – the SBI considered a submission from Brazil concerning draft elements for an agreement on privileges and immunities for individuals serving on constituted specialized bodies under the Protocol.\(^5\)

At its 32\(^{nd}\) session in Bonn – from May 31 to June 9, 2010 – the SBI considered draft conclusions proposed by the Chair (Annex), and agreed to continue its consideration of this issue at its 33\(^{rd}\) session on the basis of this Annex, with the goal to concluding these arrangements as soon as possible.\(^5\) Since both documents contain solutions (draft elements/conclusions) to the problem, they will be further discussed in Section III.

**Section III: Possible solutions**

This section is meant to give an overall picture of the solutions/options so far, including the concerns, that have been extended by several bodies – the Secretariat, the UN Office of Legal Affairs (OLA) – and the EU. Up to now, no decisions on both matters have been adopted, neither on the issue of privileges and immunities for members of constituted bodies, nor on the procedures/mechanisms to review and address disputes and claims. The establishment of an appropriate regime for privileges and immunities, that has force in all Parties, will require action by the CMP and by Parties, to implement those measures in their national law.\(^5\) This section is divided into 2 subsections: (1) solutions concerning privileges and immunities for members of constituted bodies under the Protocol, and (2) measures to regulate dispute settlement.

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\(^5\) [FCCC/SBI/2006/21], 6.
\(^5\) Ibid. 532.
\(^5\) SBI 26, Views on privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol, [FCCC/SBI/2007/MISC.4/Add.2], 2–8 (further [FCCC/SBI/2007/MISC.4/Add.2]).
\(^5\) SBI 32, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, [FCCC/SBI/2010/L.9], 2–5 (further [FCCC/SBI/2010/L.9]).
\(^5\) [FCCC/KP/CMP/2005/6], 10.
Solutions on privileges and immunities

In its note from September 16, 2005, the Secretariat proposed several measures that could be adopted by the CMP (in particular CMP 1) “to help address the present situation where individuals carrying out tasks mandated by the CMP are obliged to bear the risk of lawsuits against them”. These measures include:

(a) Parties agreeing on the elements of an umbrella agreement, containing provisions for privileges and immunities, that could be used by Parties wanting to host meetings of constituted bodies and visits by ERT’s: the negotiation of individual agreement with States will take time, and meanwhile, the work of the Protocol must continue. Thus, this makes this all the more urgent to establish a set of uniform agreements, in the form of an “umbrella agreement”, with Parties that host Protocol activities. This umbrella agreement, will provide that subsequent meetings can be undertaken on the same terms and conditions, by simply exchanging letters specifying the duration, purpose and other specific details of the meeting. If a member of a constituted body were to be sued personally in a third State, the existence of the agreement covering the acts where they took place would then be evidence that the personal suit is inappropriate.

(b) Adopting a decision, conferring privileges and immunities on representatives and members of its organs when performing official functions under the Protocol: the CMP has the authority to take whatever actions its considers necessary to realize the objectives of the Protocol. To confer an appropriate regime of privileges and immunities, it could adopt a decision that could explicitly adopt the regime of the General Convention by reference to it or by setting out its elements. Nonetheless, it would be up to each Party to give force to such a decision in its national law.

(c) Adopting a decision, supported by unilateral declarations by Parties, conferring privileges and immunities on representatives and members of its organs when performing official functions under the Protocol: another possibility for the CMP, is to include in such a decision (supra (b)) a provision calling on Parties to make a unilateral declaration that they will implement the CMP decision in their national law. This would have the same result as an amendment to the Protocol, but without the attendant complexities. The declaration would be deposited with the UN and circulated to all Parties.

(d) Amending the Protocol, conferring privileges and immunities on representatives and members of its organs when performing official functions under the Protocol: according to article 20 of the Protocol, “any Party may propose amendments to this Protocol”. These amendments are adopted by the CMP, at an ordinary session.

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537 Ibid. 536.
538 FCCC/KP/CMP/2005/6, 10.
539 Ibid. 538.
540 Paragraph 1-2 article 20 of the Protocol.
They could adopt the regime of the General Convention, by explicitly referring to it or by setting out its elements. Adopting an amendment would be a lengthy process for several reasons: it would take time for the Parties to negotiate and reach an agreement, and for the required number of ratifications to be obtained to enable the amendment to enter into force. Plus, after entry into force, the privileges and immunities would only be applicable to those Parties for which the agreement has entered into force, resulting in the application of different regimes.  

In an EU position paper from November 8, 2005, is stated that the question whether it is necessary to explicitly provide for immunities has not been analysed in depth in the Secretariat’s paper (supra). According to the EU, there are strong arguments why officials cannot be held liable when conducting their business under the Protocol.  

Overview and short assessment of these arguments:

(a) The constituted bodies under the Protocol cannot be held responsible for their actions before national courts; they have no legal personality and, therefore, cannot be subject to a claim. It is a general rule of law that a legal person is responsible for the actions of its organs. Hence, on the Protocol – as the international institution – can be held responsible for the decisions of its bodies, represented by its main organ the CMP.

(b) Also, the relevant decisions of the COP make clear that the CMP, as the main organ of the Protocol, is responsible for the actions of its bodies; the latter have a responsibility that is only an internal one within the institutional network of the Protocol.

(c) It is a rule of customary international law – existing even in the absence of an accordant provision – that international bodies and their officials generally enjoy immunity before national courts, in order to protect their functioning.

(d) The last argument is that the immunity of Kyoto officials is intended, this is demonstrated in the interpretation of the relevant COP decisions. Take the CDM EB: in Decision 21/CP.8, the rules of procedure of the CDM EB are included. According to rule 9 “Members, including alternate members, of the Executive Board shall have no pecuniary or financial interest in any aspect of a CDM project [...]”. However, independence and neutrality can only be realized when the members of the Board are free from legal process before national courts. Otherwise, they would fear compensation claims of third parties; the possibility to pull the Board members individually to court, would offer participants in de CDM projects a way to threaten the Board members, aiming to influence their decisions. Thus, the mere existence of such a pressuring medium would automatically affect the member’s independence and neutrality.

544 Draft EU Position Paper for SBI 23/CMP 1, Privileges and immunities for individuals serving on constituted bodies under the Kyoto Protocol, November 8, 2005, 3 (further EU draft PP for SBI 23/CMP 1).
545 EU draft PP for SBI 23/CMP 1, 3.
546 Ibid. 545.
547 Ibid. 545.
548 Ibid. 545.
549 COP 8, Decisions adopted by the COP, FCCC/CP/2002/7/Add.3, 9.
550 EU draft PP for SBI 23/CMP 1, 3.
In its decision 33/CMP.1 from December 9, 2005, the CMP requested the Executive Secretary to consult the UN Secretary-General on the issue of ensuring necessary privileges and immunities for individuals serving on the constituted bodies established under the Protocol, and to report to the SBI at its twenty-fourth session.\(^{551}\) The Secretariat received a response from the UN OLA in a memorandum (March 30, 2006). In its memorandum, OLA 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.”\(^{552}\) OLA 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.”\(^{553}\) The SBI was invited to consider the response from OLA, at its 24\(^{th}\) session from May 18 to 26, 2006, and make a recommendation to the CMP.\(^{554}\)

The SBI 24 requested the Executive Secretary to continue to consult the UN Secretary-General with a view to determine whether the General Convention (1946) could be made applicable to individuals serving on constituting bodies, and especially whether they could be considered as “Experts on mission for the UN” (option i) or by other ways (option ii). It also requested to determine if the CMP could invite the UN Assembly to adopt a resolution on the issue.\(^{555}\) The Secretariat received another response from OLA in a memorandum (June 30, 2006). In its memorandum, OLA 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.”\(^{556}\) OLA 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”.\(^{557}\)

\(^{551}\) Decision 33/CMP.1, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, FCCC/KP/CMP/2005/8/Add.4, 12.

\(^{552}\) SBI 24, 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, FCCC/SBI/2006/6, 3 (further FCCC/SBI/2006/6).

\(^{553}\) FCCC/SBI/2006/6, 3.


\(^{555}\) SBI 24, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol: Draft conclusions proposed by the Chair, FCCC/SBI/2006/L.10, 1 (further FCCC/SBI/2006/L.10).

\(^{556}\) SBI 25, 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, FCCC/SBI/2006/20, 3 (further FCCC/SBI/2006/20).

\(^{557}\) FCCC/SBI/2006/20, 3.
OLA further proposed four options to be considered by which individuals serving on constituted bodies and ERT’s could be provided with the necessary privileges and immunities in respect of their official functions, namely: (1) to amend the Protocol; (2) to adopt a new international instrument; (3) to apply the General Convention mutatis mutandis by a CMP decision, followed by appropriate national action; and (4) to authorize the Secretariat, by a CMP decision, to conclude bilateral agreements with Protocol Parties. The latter however, would require the granting of legal personality to the Secretariat by means of a CMP decision.\footnote{FCCC/SBI/2006/20, 5.}

In response to this memorandum, the EU briefly explained in a non-paper – i.e. a discussion paper which does not form part of formal business – some concerns it has with regard to some of the options OLA gave.\footnote{EU non-paper on the various options under examination, X, 1-3 (further EU non-paper).} With regard to the option of amending the Protocol, the EU stated that this would provide a legally watertight solution to the issue, but it would clearly be a long-term project with no immediate benefits. However, it could be possible to include the issue of privileges and immunities when the second commitment period is established (after 2012).\footnote{EU non-paper, 1.} The same advantages and difficulties of the previous option would apply when a new multilateral agreement (\textit{supra} option 2) were to be created. Regarding the third option, a CMP decision to apply \textit{mutatis mutandis} the General Convention: this decision itself would not be enough to confer privileges and immunities, implementation by national legislation would still be necessary. Furthermore, it could be very difficult for the CMP to ensure that all Parties would fully implement the decision. The result of this could be that individuals may or may not be granted privileges and immunities, depending on the level of implementation of the CMP decision by the Parties.\footnote{Ibid. 560.} Concerning the fourth and last option, bilateral agreements between the Secretariat and Parties, to confer privileges and immunities in the national jurisdiction of each Party. The realization of this option is questionable, since the Secretariat would have to be given legal personality by the CMP in order to be able to conduct such bilateral negotiations; second, the Secretariat would have to start the discouraging task of negotiating about 160 bilateral agreements.\footnote{EU non-paper, 1-2.}

**Solutions for dispute settlement**

In the Secretariat’s note from September 16, 2005, two options are considered to address claims against members, alternates and experts of constituted bodies under the Protocol.\footnote{FCCC/KP/CMP/2005/6, 11-12.} The first option is a decision by the CMP, that all lawsuits and claims personally made against representatives; members; alternates; and experts of constituted bodies, could be coordinated and handled centrally by the Executive Secretary. This would assure those acting for the CMP that they could do so without fear of being personally at risk because of performing their duty.
However, this would not absolve the personal accountability, because the Executive Secretary would have to determine whether the act complained of occurred in the execution of official duties; if the action was *ultra vires*, the Executive Secretary would decline to intervene. This decision by the CMP would also assist the Executive Secretary in obtaining active help of the Party concerned, to have the matter resolved according to the mechanisms approved by the CMP, rather than by a local court.\textsuperscript{564}

The second option is a written agreement from national and private entities – seeking to participate in Protocol mechanisms, or seeking designation as operational entities – that any claims be made to the Executive Secretary at the headquarters of the Secretariat, in accordance with the Protocol mechanisms or CMP decisions.\textsuperscript{565} This option would allow the Executive Secretary to provide “consular protection”, *i.e.* give support to the individual concerned, for instance by providing legal advice or instruct lawyers to assist the individual.\textsuperscript{566} The problem is that such written agreements may not be respected. However, their existence would form a powerful argument – that could be submitted by the Executive Secretary – to any court hearing such a claim, that the appropriate forum for dispute settlement under the Protocol is in Germany, as acknowledged in writing by the complainant.\textsuperscript{567}

In response to the request of the SBI at its 24\textsuperscript{th} session, the Secretariat prepared a note (October 4, 2006) that analysed two issues concerning privileges and immunities for members of constituted bodies, for consideration by the SBI 25: (a) the consequences of obtaining written agreements from national and private entities (*supra second option*); and (b) the consequences for the Secretariat, of providing assistance (“consular protection”) to members of constituted bodies who are faced with disputes or claims, and the role of the Executive Secretary in defending such claims.\textsuperscript{568} (*supra Section II: Documents from SBI*)

(a) The formal consent or declaration from private and public legal entities that claims will be made at the headquarters of the Secretariat, and in accordance with CMP decisions.

Regarding its elements: the objective of this declaration would be to protect the individuals serving on the constituted bodies from claims in national courts. Therefore, several matters should be included in the declaration: the activities and decisions of the members; that all disputes and/ or claims shall be made at the headquarters of the Secretariat, using the dispute settlement arrangements established by the CMP; and that the decisions of these arrangements will be final and binding. The submission of such a written declaration could be made a condition for participating in the mechanisms of the Protocol.\textsuperscript{569}

Regarding the consequences: at the international level, the Headquarters Agreement extends the dispute settlement provision of the General Convention to the Convention and the Protocol, in the host country of the Secretariat, Germany (*supra Section II: Documents from CMP, CMP 1*).\textsuperscript{570}

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\textsuperscript{564} FCCC/KP/CMP/2005/6, 11.

\textsuperscript{565} Ibid. 563.

\textsuperscript{566} EU PP for SBI 24, 2.

\textsuperscript{567} FCCC/KP/CMP/2005/6, 11- 12.

\textsuperscript{568} SBI 25, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, FCCC/SBI/2006/21, 1 (further FCCC/SBI/2006/21).

\textsuperscript{569} FCCC/SBI/2006/21, 6- 8.

\textsuperscript{570} FCCC/SBI/2006/21, 8- 9.
At the national levels, such declarations are likely to be respected by national courts if they are convinced that there is an independent and impartial remedy system under the Protocol, which is capable of providing sufficient protection to third parties. Therefore, it is important that the declaration describes the procedural rights of the party, since it has to renounce its access to national courts. Consequently, if a law suit occurs against an individual serving on a constituted body or ERT in a non-State Party, the Executive Secretary could still rely upon the declaration made by the private or public legal entity concerned to use the dispute settlement arrangements established by the CMP.  

(b) The provision of assistance, provided by the Executive Secretary, to individuals serving on constituted bodies to deal with disputes, complaints and claims. The scope of the provided assistance will depend on whether the dispute or claim has been filed in a national court or has been made at the headquarters of the Secretariat, the latter pursuant to the written declaration (supra (a)).

When a member of a constituted body or ERT has been sued in a national court, or is threatened with such a suit, it is crucial that he/she immediately forwards all relevant papers to the Executive Secretary, in order for the Legal Adviser of the Secretariat to participate in the preparation of any institutional response to this legal action or threat of such action. Two vital parts of any system to deal with lawsuits in national courts are: prompt access to the relevant authorities of the Party in whose courts the suit has been instituted, and a formally recognized channel of communication to the appropriate authorities of the Party. It is also crucial for the Executive Secretary to have authority to engage local counsel if necessary, because some jurisdictions only permit access to courts through licensed local attorneys.

However, most private and public legal entities with a grievance will contact the Executive Secretary or the member of the constituted body with details of their complaint, and seek some remedy. An initial review of the matter by the Executive Secretary is appropriate for a number of reasons, for instance because central handling of grievances by him will ensure an effective and consistent response. If the case cannot be settled during the initial review, it will have to be submitted to the formal dispute settlement arrangement.

The note also discussed the arrangements for dispute settlement. According to the Secretariat, the arrangements have a few necessary characteristics. First of all, they should be established by a CMP decision and provide for a full and independent review of claims; the procedures have to ensure that the decisions are binding on the parties. Secondly, the CMP should ensure that the arrangements are independent of the CMP and its bodies, that the judging of disputes is not subject to its direction or that of the Executive Secretary. The other issue concerning the arrangements for dispute settlement, is whether the arrangements could use an existing institution – established by the UN – or whether they should be established separately. Using the arrangements established by the UN, would require specialized

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571 FCCC/SBI/2006/21, 9.
572 FCCC/SBI/2006/21, 10.
573 FCCC/SBI/2006/21, 10-11.
574 FCCC/SBI/2006/21, 11.
575 Ibid. 574.
576 FCCC/SBI/2006/21, 12.
577 Ibid. 576.
expertise, and it is highly unlikely that an existing mechanism would be suitable or easily adaptable to this task.\(^{578}\)

With the creation of new dispute settlement arrangements comes that they must be credible and that they must be seen by all stakeholders, to be administered fair and impartially. It follows that it is crucial that the proposed structure and procedures for the arrangements are established by the CMP. The venue for the settlement of disputes and claims should be based in the host country of the Secretariat, since the regime of privileges and immunities – established by the Headquarters Agreement – is applicable in that country (Germany). The body set up to settle the disputes should be composed of experts in the appropriate fields, nominated by the CMP or Secretariat on the basis of their professional expertise; and should meet as necessary to consider cases submitted for adjudication. In the event of a dispute, each party would select one member and the third would be selected by both parties or by an independent third person, the latter in case of non-agreement.\(^{579}\)

Acceptance of dispute settlement arrangements by the CMP should emphasize that they constitute the exclusive remedy system, and that participants in the Protocol mechanisms must formally consent that their participation is conditional on their acceptance of these arrangements. When establishing a separate dispute settlement body, the CMP decision should unmistakable state that the body has exclusive jurisdiction concerning all disputes arising from the mechanisms under the Protocol. The effectiveness of the arrangements will depend on national courts, recognizing and enforcing the decision of the CMP.\(^{580}\)

Draft treaty arrangements

On several occasions, draft treaty arrangements on privileges and immunities for individuals serving on constituted bodies were submitted by e.g. Parties to the Protocol, the SBI Chair…\(^{581}\) Since they all propose roughly the same provisions, I decided to only discuss the most recent ones, listed in draft texts in a report of the SBI on its thirty-sixth session, held in Bonn from 14 to 25 May, 2012.\(^{582}\) The following draft treaty arrangements could be made applicable:

1. Individuals serving on constituted bodies and other entities established under the Protocol or established under the Convention and its related legal instruments, listed in annex x, shall be accorded such privileges and immunities as are necessary for the independent exercise of their official functions. They shall, while exercising their official functions, including the time spent on journeys in connection with their official functions, be accorded:

   “(a) Immunity from personal arrest or detention;

   (b) Immunity from legal process of every kind in respect of words spoken or written and acts done by them in the course of the performance of their official functions. This immunity from

\(^{578}\) FCCC/SBI/2006/21, 13.

\(^{579}\) FCCC/SBI/2006/21, 13- 14.

\(^{580}\) FCCC/SBI/2006/21, 14.

\(^{581}\) SBI 26, Views on privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol: Submissions from Parties, FCCC/SBI/2007/MISC.4/Add.2 and SBI 32, Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol: Draft conclusions proposed by the Chair, FCCC/SBI/2010/L.9.

\(^{582}\) SBI 36, Draft texts under consideration by the SBI and Draft text under consideration by the CMP, FCCC/SBI/2012/15/Add.2.
legal process shall continue to be accorded to the individuals referred to in this paragraph notwithstanding that they have ceased to exercise their official functions;

(c) Inviolability for all papers and documents’;

(d) For the purpose of their communication with the constituted bodies and other entities listed in annex x and with the secretariat, the right to use codes and to receive and send papers and documents in whatever form and materials relating to their official functions by courier or in sealed bags or electronic means;

(e) Processing of visa applications, when accompanied by a document from the secretariat confirming that the travel is on business for the constituted bodies and other entities listed in annex x, as rapid as possible, in alignment with national legislation.

2. The individuals referred to in paragraph 1 above are those individuals elected, selected or appointed to serve on the constituted bodies and other entities, established under the Protocol or established under the Convention and its related legal instruments listed in annex x.

3. Privileges and immunities are granted to the individuals referred to in paragraph 1 above as are necessary for the independent exercise of their official functions and not for the personal benefit of the individuals themselves. The Executive Secretary of the Secretariat shall have the right and the duty to waive the immunity of any individual referred to in paragraph 1 above in any case where, in his or her opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the operation and implementation of Protocol or the operation and implementation of the Convention and its related legal instruments.\(^{583}\)

The bodies in annex x:

1. Executive Board of the clean development mechanism (CMD EB).
2. Compliance Committee.
3. Joint Implementation Supervisory Committee (JI SC).
4. Adaptation Fund Board.
5. Expert review teams (ERT’s) established under Article 8 of the Protocol.
6. Committees, panels or groups established by the entities listed in 1–4 above.

And other relevant constituted bodies and entities agreed through the post-2012 arrangements.\(^{584}\)

**Section IV: My solution**

According to my opinion, there are several options – discussed in the previous section – that could constitute a good solution to the problem of the privileges and immunities for individuals serving on constituted bodies and ERT’s under the Protocol. The first one is the “umbrella agreement”, forming a basis for individual negotiations with Parties that host Protocol activities.

\(^{583}\) **FCCC/SBI/2012/15/Add.2**, 45.  
\(^{584}\) **FCCC/SBI/2012/15/Add.2**, 46.
This agreement would expedite the process of granting privileges and immunities to members of constituted bodies, but unfortunately only in the host state. The amendment of the Protocol also seems a good solution. However, since it would take a lot of time to amend the Protocol – ratification by all Parties, implementation in national legislation by all Parties – this might not be the perfect solution. Nonetheless, as stated several times by the EU in their position papers, it would be desirable to aim for such a long-term solution as part of the post-2012 arrangements (second commitment period). Another way to achieve the same result as the amendment – but without the attendant complexities – would be for the CMP to adopt a decision on privileges and immunities, and include a provision in that decision, calling on Parties to make a unilateral declaration that they will implement the CMP decision in their national law. The best solution to this issue, according to the EU’s findings, is the development of a legally binding multilateral instrument providing for privileges and immunities for individuals serving on constituted bodies, whose negotiation and ratification would be very time and resource intensive. In my opinion, the CMP should adopt a decision to apply *mutatis mutandis* the 1946 General Convention; since the cause of granting immunities under the General Convention is to ensure the independent exercise of functions (functionality of immunities), they could also be made applicable to the constituted bodies and ERT’s under the Protocol. This CMP decision could read as follows: “*Parties are invited to ensure that national courts recognize that members of constituted bodies under the Kyoto Protocol are accorded a status equivalent to that provided in Article 6 of the 1946 Convention […]*.” 585 Nevertheless, it is of major importance that all these solutions should be part of the wider discussion on the post 2012 arrangements.

Regarding the dispute settlement arrangements: the request, to all private and public legal entities seeking to participate in the Protocol mechanisms, to declare that all claims against (members of) the constituted bodies will be made at the headquarters of the Secretariat in accordance with CMP decisions, is in my opinion the best solution. Central handling of disputes or claims by the Executive Secretary would guarantee an effective and consistent settlement of the claims or disputes.

**Chapter IV: Conclusion**

The issues dealt with in this part concern the absence of privileges and immunities for members of constituted bodies or ERT’s under the Protocol, and the lack of dispute settlement arrangements. Both issues are currently being discussed by the CMP and SBI. Among the issues being considered, there are the options for providing a legal regime that ensures the necessary immunities and provides arrangements for addressing disputes and claims raised by private or public legal entities against individuals serving on these constituted bodies. 586 The overall objective is to ensure the effective functioning of the Protocol. Because of the functions of members of constituted bodies, they may be exposed to third party claims at some stage.

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585 EU draft background paper on ‘Privileges and Immunities’ in preparation for CMP 3, 2.
Although these individuals have privileges and immunities in Germany under the Headquarters Agreement (supra Section II: CMP 1, paragraph 2), or in a State which has agreed to a conference agreement that is drafted broadly enough to cover their activities (supra Section II: CMP 1, paragraph 3), they have no such protection elsewhere against claims from third parties brought against them in their personal capacity. The Secretariat provided several options, such as: an umbrella agreement; an amendment of the Protocol; a CMP decision, which is supported by unilateral declarations by Parties, to confer privileges and immunities when performing official functions under the Protocol; an agreement from national and private entities that all claims must be made at the headquarters of the Secretariat; and a request that all third party claims against members of the constituted bodies be handled by the Executive Secretary. Some of these options have more disadvantages than benefits; for instance a long ratification procedure, budgetary consequences, non-implementation by Parties. An important role is conferred to the Secretariat, to provide advices, assistance and “good offices”\(^{587}\) to address potential problems. The EU also pointed out that it wants the SBI to work towards the situation here the privileges and immunities, granted by the 1946 General Convention, would be applied to the constituted bodies under the Protocol. OLA however, in its responses (supra Section III, FCCC/SBI/2006/6 and 20), stated very clearly that the General Convention cannot be automatically extended to the individuals serving on the constituted bodies. The amendment of the Protocol would provide a legally watertight solution to the issue, but on the other hand would also be very time and resource intensive, bearing in mind the long ratifications process and implementation in national legislation. The focus of the discussion should be mainly on immunities, especially immunity from jurisdiction. The only credible solution would be to create a new multilateral, and legally binding instrument that would provide for privileges and immunities for members of constituted bodies under the Protocol. However, such a long-term solution should be part of the wider discussion on the post 2012 arrangements.

\(^{587}\) Meaning his prestige and the weight of the institution he represents (the UNFCCC).
Part V: Conclusion

The objective of this study was to determine which privileges and immunities should be conferred to members of experts panels with the UN, and more specifically to members of the constituted bodies and expert review teams under the Kyoto Protocol, in order to enable them to perform their official functions without any hindrance. In order to conclude on this objective, a closer look at the diplomatic privileges and immunity was necessary. In 1961, the Vienna Convention on diplomatic relations was adopted, granting a number of privileges and immunities – such as freedom of communication, immunity from jurisdiction and inviolability of the premises of the mission – to the different people involved in a diplomatic mission. Most immunities are of a functional nature, meaning those necessary for the effective performance of a person’s functions.

Since the proliferation of international organizations over the last centuries, the need for a new category of privileges and immunities arose: international immunities. Founded in 1945, the world’s most prominent and influential international organization is considered to be the United Nations. Consisting of six principle organs and a number of subsidiary bodies; fifteen specialized agencies and related organs; several programs; ad hoc missions and expert bodies, the UN is considered a structural monstrosity. To ensure the free function of its organs and the independent exercise of the functions and duties of its personnel, the UN has developed different regimes of privileges and immunities as well. Being primarily conventional, the four prominent sources considered are the United Nations Charter; the General Convention; the United Nations Headquarters Agreement and the Special Convention. They all confer privileges and immunities to the various categories of people who are affiliated with the UN, inter alia personnel with the UN, representatives of Member States and the UN itself. Despite their international character, the conferred privileges and immunities are, in general, similar to the diplomatic privileges and immunities. A specific group of UN personnel are the experts on mission for the UN, who are accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions.

Looking at the UN from another perspective, namely as an organizer of universal conferences, and more specific climate change conferences. In 1994, as a result of the Earth Summit, the UNFCCC was adopted; followed by its Kyoto Protocol in 1997. To ensure the effective implementation, a number of bodies – e.g. COP, CMP, SBI – were established under both the UNFCCC and the Protocol. Arriving at my case study as well as the problem statement. Neither the Convention nor the Protocol made arrangements to confer privileges and immunities to its constituted bodies or ERT’s. Furthermore, arrangements on how to settle disputes or claims, against members of this constituted bodies, have not been made so far. Although these individuals have privileges and immunities in Germany under the Headquarters Agreement, or in a State which has agreed to a conference agreement that is drafted broadly enough to cover their activities, they have no such protection elsewhere against claims from third parties brought against them in their personal capacity. Both issues are currently being discussed by the CMP and the SBI.

588 Article VI of the General Convention.
Through an analysis of notes from the Secretariat, submissions from Parties, EU position papers and draft conclusions proposed by the Chair, I tried to determine how to confer privileges and immunities to the members of constituted bodies under the Protocol, and how to make arrangements for dispute settlement. Regarding the latter, the Secretariat advised the CMP to take a decision, giving the Executive Secretary the authority to handle all claims—concerning official duties—against members and experts of constituted bodies, and ensuring that the defence is managed institutionally. The second possibility would be to require a written agreement from national and private entities—seeking to participate in the Protocol mechanisms—stating that all claims or disputes will be made at the headquarters of the Secretariat, and in accordance with CMP decisions. The focus of the discussion however, is mainly on immunities. Amongst other options—such as the amendment of the Protocol or the adoption of a CMP decision to apply *mutatis mutandis* the General Convention—the best solution considered is the development of a legally binding multilateral instrument conferring privileges and immunities to members of constituted bodies and ERT’s under the Protocol. Nevertheless, this would be a very time and resource consuming process. Bearing in mind that the first commitment period of the Protocol—from 2008 to 2012—is coming to an end, it may be advisable to further review such a long-term solution in connection with the wider discussion on the post 2012 arrangements.
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Abstract

Het toekennen van voorrechten en immuniteiten aan leden van diplomatieke zendingen zorgt ervoor dat zij hun functies ongehinderd – zonder bemoeienis van de ontvangststaat – kunnen uitoefenen. Hiervoor bestaat een allesomvattende conventie, namelijk de Vienna Convention on Diplomatic Relations van 1961 (VCDR). Door de massale ontwikkeling van internationale organisaties werd het noodzakelijk om ook voor deze organisaties en hun werknemers te voorzien in bepaalde voorrechten en immuniteiten. Immers, deze organisaties bezitten geen eigen territorium, waardoor hen een onderscheiden en onafhankelijke status wordt toegekend. Omdat er een veelheid aan internationale organisaties is, heb ik mij beperkt tot de organisatie van de Verenigde Naties; en hierbinnen tot de topic van klimaatverandering en opwarming van de aarde, meer specifiek het Raamverdrag over klimaatverandering (UNFCCC) en bijhorend Kyoto Protocol.

In deze uiteenzetting werd mij de uitdaging geboden om een oplossing te zoeken voor het ontbreken van een regime dat voorrechten en immuniteiten verleent aan leden van de opgerichte lichamen en Expert Review teams onder het Kyoto Protocol van 1997. Om tot een oplossing van deze probleemstelling te komen, moesten enkele aansluitende kwesties besproken worden. Een eerste uitdaging was het analyseren van de structuur en organisatie van de Verenigde Naties. Het Handvest van de Verenigde Naties heeft zes hoofdorganen ingesteld; maar de ‘VN- familie’ is echter veel groter en omvat daarnaast nog vijftien gespecialiseerde organisaties, verschillende programma’s en fondsen, en verwante organisaties. Uit deze specifieke structuur volgt dan ook de nood om gepaste regimes met betrekking tot voorrechten en immuniteiten voor de VN werknemers en aanverwanten aan te nemen. De bronnen van deze voorrechten en immuniteiten zijn voornamelijk conventioneel; specifiek voor internationale organisaties is ook de ‘Headquarters Agreement’ die wordt afgesloten met het land waar de organisatie zijn hoofdzetel heeft. Uit een analyse van de vier belangrijkste bronnen blijkt dat de toegekende voorrechten en immuniteiten doorgaans overeenkomen met de diplomatieke voorrechten en immuniteiten uit de VCDR. Een specifieke groep van gerechtigden zijn de experts op missie voor de Verenigde Naties. Zij genieten voorrechten en immuniteiten die nodig zijn voor de onafhankelijke uitvoering van hun functies, tijdens de periode van hun missies.

589 The United Nations Charter, the Headquarters Agreement, the General Convention en the Special Convention.
Een andere oplossing zou kunnen zijn: het aannemen van een beslissing met betrekking tot voorrechten en immuniteiten door de CMP, waarin een bepaling wordt opgenomen die Leden aanspoort om een unilaterale verklaring af te leggen met de belofte om de CMP-beslissing op te nemen in hun nationale wetgeving. Deze optie zou dezelfde resultaten hebben als de amendering, maar zonder de bijkomende moeilijkheden. De meest aan te raden oplossing volgens mij is, het aannemen van een beslissing door de CMP waarin het regime van de ‘General Convention’ van 1946, mits aanpassing, van toepassing wordt verklaard op leden van de opgerichte lichamen onder het Protocol. Aangaande de voorzieningen voor geschillenbeslechting zijn minder voorstellen gemaakt. Een eerste voorstel is het centraal behandelen van geschillen of klachten tegen leden van de opgerichte lichamen, door de ‘Executive Secretary’. Een tweede optie – een goede oplossing volgens mij – is een geschreven verklaring van de deelnemende entiteiten aan de mechanismen onder het Protocol, dat alle klachten zullen worden overgemaakt aan de ‘Executive Secretary’ op de hoofdzetel van het Secretariaat (Bonn, Duitsland); dit in overeenstemming met de mechanismen of CMP-beslissingen. Hierdoor zou een efficiënte en consequente geschillenbeslechting gegarandeerd kunnen worden. Niettegenstaande de aangeboden oplossingen, en rekening houdende met het feit dat de eerste ‘commitment period’ van het Protocol bijna afloopt, is het aan te raden om de besprekingen met betrekking tot een lange termijn oplossing te bekijken in het kader van de post 2012 voorzieningen.