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SUBSIDIARY BODY FOR IMPLEMENTATION

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Item 14 (d) of the provisional agenda

Administrative, financial and institutional matters

**Privileges and immunities for individuals serving on constituted bodies
established under the Kyoto Protocol**

**Appropriate treaty arrangements relating to privileges
and immunities for individuals serving on constituted bodies
established under the Kyoto Protocol**

Submissions from Parties

1. The Subsidiary Body for Implementation (SBI), at its twenty-eighth session, invited Parties to submit to the secretariat, by 20 March 2009, their views on appropriate treaty arrangements relating to privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol, for consideration by the SBI at its thirtieth session (FCCC/SBI/2008/8, para. 109 (c)).
2. The secretariat has received two such submissions. In accordance with the procedure for miscellaneous documents, these submissions are attached and reproduced* in the language in which they were received and without formal editing.

* These submissions have been electronically imported in order to make them available on electronic systems, including the World Wide Web. The secretariat has made every effort to ensure the correct reproduction of the texts as submitted.

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* This submission is supported by Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Turkey.

PAPER NO. 1: CZECH REPUBLIC ON BEHALF OF THE EUROPEAN COMMUNITY
AND ITS MEMBER STATES

This submission is supported by Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Turkey

**Subject: Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol
Views on appropriate treaty arrangements on the issue of privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol**

Referring to the invitation by the Subsidiary Body for Implementation (FCCC/SBI/2008/8, paragraph 109(c)), the European Union welcomes the opportunity to submit views on appropriate treaty arrangements.

At the outset, the European Union would like to note that the issue of privileges and immunities became topical after the CDM Executive Body had expressed its concerns that individuals serving on constituted bodies established under the Kyoto Protocol might be subject to legal action in national courts for redress. It is against this background that the European Union would like appropriate treaty arrangements to ensure that individuals serving on constituted bodies are fully protected when taking decisions in connection with the exercise of their official functions for which they have been mandated.

The European Union is of the view that the only credible and uniform solution can be found through the inclusion of a legally binding provision as part of the post-2012 arrangements and applied by all Parties to the Kyoto Protocol. This solution should provide effective protection to all members and alternate members serving on constituted bodies established under the Kyoto Protocol. The focus of the consideration should be on immunities, which are necessary and appropriate for the effective functioning of the constituted bodies. In this regard, relevant provisions under article VI of the 1946 Convention on the Privileges and Immunities of the United Nations, could form the basis for the appropriate treaty arrangements as they constitute the already existing law and accepted practice.

Accordingly, the European Union would like to propose the following article as part of the post-2012 treaty arrangements:

Article X

1. Individuals serving as members or alternate members of bodies constituted under this Protocol shall be accorded such immunities as are necessary for the independent exercise of their functions. These immunities shall only apply to activities in connection with the exercise of their official functions. They shall be accorded:

(a) in respect of words spoken or written and acts done by them in the course of the performance of their function, 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 members or alternate members of bodies constituted under this Protocol;

(b) inviolability for all papers and documents.

2. Immunities are granted to members and alternate members for the efficient performance of their official functions and not for the personal benefit of the individuals themselves. The Executive Secretary to the United Nations Framework Convention on Climate Change shall have the right and the duty to waive the immunity of any member or alternate member in any case where, in his or her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the operation of this Protocol.

3. Constituted bodies referred to in paragraph 1 above are the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee, the compliance committee and the expert review teams established under Article 8 of the Kyoto Protocol.

The EU is continuing its analysis on the issue of privileges and immunities and may provide additional views on the treaty arrangements at a later stage.

PAPER NO. 2: NEW ZEALAND

SUBMISSION TO THE SUBSIDIARY BODY FOR IMPLEMENTATION (SBI) AND THE AD HOC WORKING GROUP ON FURTHER COMMITMENTS FOR ANNEX I PARTIES UNDER THE KYOTO PROTOCOL (AWG-KP)

IMMUNITIES PROVISIONS

FURTHER VIEWS OF NEW ZEALAND

As outlined in New Zealand's submission on legal issues of 15 February 2009 (FCCC/KP/AWG/2009/MISC.6), New Zealand considers that legally binding immunities provisions are required for individuals serving on constituted bodies and Article 8 Expert Review Teams (ERTs) established under the Kyoto Protocol, and that this should be an essential element of any post-2012 legal framework.

2. The immunities provisions could be established through amendments to either the United Nations Framework Convention on Climate Change (the Convention) or the Kyoto Protocol, or as part of a new legal instrument. While including immunities at Convention level would give broader application to any new Protocols established under the Convention, New Zealand considers that there are practical reasons for incorporating the provisions in the Kyoto Protocol where the amendments can be included with wider amendments for the second commitment period and thereby facilitate their timely entry into force. The text below is drafted as a possible amendment to the Kyoto Protocol, but could equally form the basis for use in other instruments with the necessary changes.

Coverage of Immunities Provisions:

3. It will be important to ensure that the immunities provision are drafted to include individuals serving as members, and their alternates, on the constituted bodies under the Kyoto Protocol, including the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee, the Compliance Committee, and the Adaptation Fund Board. Individual experts serving on Expert Review Teams established under Article 8 of the Kyoto Protocol must also be covered.

Content of Immunities Provisions:

4. Immunities provisions will ensure that individuals serving on constituted bodies and ERTs are able to carry out their functions effectively, free from interference from national courts. As a minimum, New Zealand would therefore expect individuals serving on constituted bodies and ERTs to be accorded immunity from legal process and personal arrest or detention in respect of words spoken or written and all acts performed by them in their official capacity, and that such immunity should continue after they have ceased to carry out these roles.

5. New Zealand would further support the inclusion of a waiver provision where granting the immunity would impede the course of justice, and the immunity can be waived without prejudice to the interests of the UNFCCC.

Suggested text:

[1] Individuals serving as experts on expert review teams established pursuant to Article 8 of this Protocol, or as members or alternate members on constituted bodies established under this Protocol, including the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee, the Compliance Committee, and the Adaptation Fund Board, shall be accorded immunities consistent with the provisions of this Article.

[2.] The individuals identified in paragraph [1] shall be accorded such immunities as are necessary for the independent exercise of their official functions under this Protocol during the period of their tenure, including for the time spent on journeys in connection with their functions. In particular they shall be accorded:

- (a) immunity from personal arrest or detention and from suit and legal process of every kind in respect of words spoken or written and acts done or omitted to be done by them in the course of the performance of their official functions under this Protocol. Such immunity shall continue to be accorded notwithstanding that the persons concerned are no longer serving on a constituted body or expert review team established under this Protocol;
- (b) inviolability for all papers and documents.

[3.] Immunities are granted to the individuals identified in paragraph [1] in the interest of the effective implementation of this Protocol, and not for the personal benefit of the individuals themselves. The Executive-Secretary shall have the right and the duty to waive the immunity of any individual in any case where, in the Executive-Secretary's opinion, the immunity would impede the course of justice and can be done without prejudice to the implementation of this Protocol. Waiver shall be express.
