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UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

**AD HOC WORKING GROUP ON FURTHER COMMITMENTS
FOR ANNEX I PARTIES UNDER THE KYOTO PROTOCOL**

Seventh session

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Item 5 (g) of the provisional agenda

Other issues arising from the implementation of the work programme of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol

Legal matters arising from the mandate of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol

**Views on the legal implications arising from the work of the
Ad Hoc Working Group on Further Commitments for
Annex I Parties under the Kyoto Protocol pursuant
to Article 3, paragraph 9, of the
Kyoto Protocol**

Submissions from Parties

Addendum

1. In addition to the four submissions contained in document FCCC/KP/AWG/2009/MISC.6, one further submission has been received.
2. In accordance with the procedure for miscellaneous documents, this submission is attached and reproduced* in the language in which it was received and without formal editing.

* This submission has been electronically imported in order to make it available on electronic systems, including the World Wide Web. The secretariat has made every effort to ensure the correct reproduction of the text as submitted.

SUBMISSION FROM TUVALU

Tuvalu Submission on Legal Implications Arising from the Work of the AWG-KP

Tuvalu offers its views with respect to legal implications arising from the work of the AWG-KP pursuant to Article 3, paragraph 9 of the Kyoto Protocol.

Tuvalu understands that there are specific legal considerations with the development of new commitments for Annex I Parties for the second commitment period. These legal considerations relate to the need to amend Annex B of the Protocol and related text within the body of the Protocol. Tuvalu also believes that there is a need to invoke broader legal considerations in the context of the work of the AWG KP and in relation to the work of the SBI.

As a point of principle, Tuvalu believes that the overall architecture of the Kyoto Protocol should remain as it is. Only a limited number of amendments should be developed to cover necessary changes to suit commitments in the second commitment period and to elaborate upon current provisions within the Protocol. Tuvalu believes that additional text should be provided to meet the legal needs of the second commitment period.

In the context of the amendment to Annex B, Tuvalu believes it would be appropriate to amend the Protocol to include an Annex C. Annex C would inscribe commitments for the second commitment period for countries that are currently on Annex B and provide for additional Non Annex I Parties, if they so elect, to be added to the list. Annex C would list the Party, the quantified emission limitation or reduction commitment (represented as a percentage of the base year). Annex C should represent nation-wide targets. Consideration of sectoral targets should be undertaken within the context of the work of the Ad Hoc Working Group on Long Term Cooperative Action.

Amendments would also be necessary to Annex A to allow for the inclusion of new gases. The list of sectors/source categories in the new Annex A.I should include a new sector relating to aviation and maritime transport. To this end, Tuvalu suggests a new Annex A.I, which would list new gases and the new sector on aviation and maritime transport.

To encompass the second commitment period and the provision to allow Non Annex I Parties to elect to undertake commitments, a number of consequential amendments to the Protocol would be required. These are hereby suggested (with significant changes noted in bold text). The provisions relating to Non Annex I Parties are added as additional paragraphs, rather than amendments to existing paragraphs. This is done for two key reasons:

- (i) to preserve the existing commitments made in the first commitment period;
- (ii) to provide transparency in the obligations on Non Annex I Parties

Tuvalu believes that the procedures and mechanisms relating to compliance under the Kyoto Protocol that have already agreed upon by the CMP should be incorporated within the amendments to the Protocol. The simplest means of doing this would be to refer to the decision of the CMP.

Tuvalu also believes a new legal instrument should be developed to provide immunities for persons serving on various bodies under the Kyoto Protocol. It is our view that this should be a separate agreement. We will provide details on our views on this matter in another submission.

Suggested Amendments:

Article 1 paragraph 8: A new Article 1, paragraph 8 could be added to allow a definition of Non Annex I Parties. This could read as follows:

Article 1.8. “Party not included in Annex I” means a Party to the Convention which is not a Party included in Annex I to the Convention, as may be amended.

Article 2 paragraph 1 bis: A new Article 2 paragraph 1 bis could be added to allow for the inclusion of Non Annex I Parties, if they so elect. This could read as follows:

Article 2.1 bis: Each Party not included in Annex I, which has elected to make a commitment inscribed in Annex C, in achieving its quantified emission limitation and reduction commitment under Article 3, in order to promote sustainable development shall, implement the provisions in Article 2 paragraph 1 (a)-(b) above.

Article 2 paragraph 2: Article 2 paragraph 2 could be amended to give better effect to the implementation of measures to address emissions from aviation and maritime transport. In a similar vein, emissions from aviation and maritime transport could be added as a new sector in Annex A.I. The Article could read as follows (see also the new Annex A.I).

Article 2.2: The Parties included in Annex I and **Parties not included in Annex I, which have elected to make a commitment inscribed in Annex C** shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, **as part of their commitments under Article 3, and shall do so in collaboration with** the International Civil Aviation Organization and the International Maritime Organization, respectively.

Additional Article 3, paragraph 1 bis: A new Article 3 paragraph 1 bis could be added. This would use similar text found in Article 3.1 but would indicate new elements as follows:

- (i) a reference to both Parties included in Annex I and Non Annex I Parties, who so elect (this allows Non Annex I Parties to elect to be listed on a new Annex C, without necessarily taking on all obligations required of Annex I Parties under paragraphs 4.2 (a) and (b)
- (ii) a reference to Annex C
- (iii) a reference to Annex A:I (This would be a new Annex to include new gases)
- (iii) a new overall reduction target relative to 1990 (noting that the same base year period would apply)
- (iv) an indication that the second commitment period would have a five year duration 2013 to 2017 (noting that Tuvalu believes that the second commitment period should repeat the 5 year timeframe established in the first commitment period).

The new Article 3, paragraph 1 bis could read as follows:

Article 3.1 bis. The Parties included in Annex I, **and Parties not include in Annex I, if they so elect**, shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of greenhouse gases listed in Annex A **and Annex A.I** do not exceed their assigned amounts, calculated pursuant to the quantified emission limitation and reduction commitments inscribed in **Annex C** and in accordance with the provisions of this Article, with a view to reducing overall emissions of such gases by at least **X** per cent below 1990 levels in the commitment period **2013-2017**.

Tuvalu suggests that Articles 3 paragraphs 2, 3 and 4 should not have additional paragraphs to include a reference to Parties not included in Annex I.

Additional Article 3, paragraph 5 bis. A new Article 3 paragraph 5 bis could be added this would have similar provisions to those similar to the second sentence of Article 3.5. It could read as follows:

Article 3.5 bis. **Any Party not included in Annex I, which has elected to make a commitment inscribed in Annex C**, may notify the Conference of Parties serving as the meeting of Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of Parties serving as the meeting of Parties to this Protocol shall decide on the acceptance of such notification.

Additional Article 3, paragraph 7 bis: A new Article 3 paragraph 7 bis could be added. This would use similar text found in Article 3.1 but would indicated new elements as follows:

- (i) a reference to the 2013 to 2017 commitment period;
- (ii) a reference to Annex C
- (iii) a deletion of the second sentence of Article 3.1 as it is the view of Tuvalu that this provision applied to the first commitment period only.

The new Article 3, paragraph 7 bis could read as follows:

Article 3.7 bis. In the **second quantified emission limitation and reduction commitment period, from 2013 to 2017**, the assigned amount for each Party included in Annex I, **or any Party not included in Annex I, if it so elects**, shall be equal to the percentage inscribed in **Annex C** of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990 **and Annex A.I in X year** (*base year for new gases*), or the base year or period determined in accordance with paragraph 5 **or paragraph 5 bis, as appropriate, above**, multiplied by five.

Additional Article 3.8 bis: A new Article 3 paragraph 8 bis could be inserted to establish a base year for any new gases.

The new Article 3, paragraph 8 bis could read as follows:

Article 3.8 bis. **For the second commitment period**, any Party included in Annex I **or any Party not included in Annex I, which has elected to make a commitment inscribed in Annex C**, may use **X** as its base year for **X, Y, Z (new gases)**, for the purposes of the calculation referred to in paragraph 7 bis above.

Article 3 paragraph 9 bis: A new Article 3 paragraph 9 bis, could be inserted to establish a procedure for reviewing commitments in subsequent commitment periods. Tuvalu does not believe that this is necessary as this procedure could be established by a decision of the Parties serving as the meeting of Parties. This would allow greater flexibility in determining a review of commitments based on the most recent scientific evidence.

Article 3 paragraph 13 bis: A new Article 3 paragraph 13 bis could be inserted to include similar provisions for Parties not included in Annex I. This could read as follows:

Article 3.13 bis. If the emissions of a **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C**, in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment period.

Article 3 paragraph 14 bis: A new Article 3 paragraph 14 bis could be inserted to include relevant provisions for Parties not included in Annex I. These provisions could be simplified to avoid additional financial obligations on Non Annex I Parties. This could read as follows:

3.14 bis. **Each Party not included in Annex I, which has elected to make a commitment inscribed in Annex C**, shall strive to implement the commitments mentioned in paragraph 1 bis above in such a way as to minimize adverse social, environmental and economic impacts on developing countries, particularly those identified in Article 4, paragraphs 8 and 9 of the Convention.

Article 4 paragraph 1 bis: A new Article 4 paragraph 1 could be inserted to include similar provisions for Parties not included in Annex I. This could read as follows:

Article 4.1.bis. Any Parties included in Annex I and **any Parties not included in Annex I, which have elected to make a commitment inscribed in Annex C**, that have also reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A **and Annex A.I** do not exceed their assigned amount calculated pursuant to their quantified emission limitation and reduction commitments inscribed in **Annex C** and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.

Article 4 paragraph3 bis: A consequential paragraph would need to be added. This could read as follows:

Article 4.3 bis. Any such agreement shall remain in operation for the duration of the commitment period specified in **Article 3, paragraph 7 bis**.

Article 5 paragraph1 bis: A consequential paragraph would need to be added. This could read as follows:

Article 5.1 bis. Each **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall have in place, no later than one year prior to the start of the **second commitment period**, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol, **no later than two years prior to the start of the second commitment period**.

Article 5 paragraph 3 bis: A consequential paragraph would need to be added. This could read as follows:

Article 5.3 bis. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A **and AI** shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

Article 6.1 bis. A new Article 3 paragraph 14 bis could be inserted to include relevant provisions for Parties not included in Annex I. This could read as follows:

Article 6. 1 bis. For the purpose of meeting its commitments under Article 3, any **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C may transfer to, or acquire from, any other such Party or any Party included in Annex I**, emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:

- (a) Any such project has the approval of the Parties involved;
- (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
- (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and
- (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.

Article 6 paragraph 1 ter: A new paragraph could be inserted to allow the continuation of Article 12 project activities for Non Annex I Parties that elect to make commitments. This provision would continue until the end of the current crediting period. This could read as follows:

Article 6.1 ter. **When a Party not included in Annex I, has elected to make a commitment inscribed in Annex C, the modalities and procedures for any registered clean development mechanism project activity under Article 12, hosted by that Party shall continue, *mutatis mutandis*, as those specified by the Conference of Parties serving as the meeting of Parties until the end of their current crediting period and a quantity of assigned amount units (AAUs) equal to the CERs issued from this time onwards shall be cancelled.**

Article 6 paragraph 3 bis: A consequential paragraph would need to be added. This could read as follows:

Article 6.3 bis: **A Party not included in Annex I, which has elected to make a commitment inscribed in Annex C** may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.

Article 6 paragraph 4 bis: A consequential paragraph would need to be added. This could read as follows:

Article 6.4 bis. If a question of implementation by a **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C** of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

New Article 6 paragraph 5: A new paragraph could be inserted to provide for a share of proceeds from project activities under Article 6 to assist vulnerable countries. This could have similar wording to that found in Article 12 paragraph 8. This could read as follows:

Article 6.5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from **approved project activities established under this Article** is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

Article 7 paragraph 1 bis: A consequential paragraph would need to be added. This could read as follows:

Article 7.1 bis. Each Party **not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.

Article 7 paragraph 2 bis: A consequential paragraph would need to be added. This could read as follows:

Article 7.2 bis. Each Party **not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.

Article 7 paragraph 3 bis: A consequential paragraph would need to be added. The timing for the submission of the first inventory would need to match the entry into force of the new provisions of the Protocol. This could read as follows:

Article 7.3 bis. Each Party **not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after for which the Party **not included in Annex I, has elected to make a commitment inscribed in Annex C**. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention **after this and related provisions of the Protocol have** entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

Article 7 paragraph 4 bis: A consequential paragraph would need to be added. This could read as follows:

Article 7.4 bis. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by **Parties not included in Annex I** adopted by the Conference of the Parties.

Article 8 paragraph 1: A consequential paragraph would need to be added. This could read as follows:

Article 8.1 bis. The information submitted under Article 7 by each Party **not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C**, shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each **Party not included in Annex I, which has elected to make a commitment inscribed in Annex C** shall be reviewed as part of the review of communications.

Article 10: A consequential amendment is needed for the chapeau to Article 10 to eliminate a redundancy. This could read as follows:

Article 10. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, **and** reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

New Article 12, paragraph 3, subparagraph (c): A consequential new subparagraph is needed to allow Non Annex I Parties that elect to take commitments to acquire CERs from other Non Annex I Parties. This could read as follows:

Article 12.3(c). Parties **not included in Annex I, which have elected to make a commitment inscribed in Annex C** may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

New Article 17 paragraph 2: A new paragraph could be added to Article 17 to facilitate funding for vulnerable countries. The original Article 17 would become Article 17 paragraph 1. The new paragraph would allow for the auctioning of AAUs at the time of issuance. This could read as follows:

Article 17.2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from the **issuance of assigned amount units** is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.

New Article 18, paragraph 2. A new paragraph could be added to Article 18 to give full effect to the procedures and mechanism relating to compliance under the Kyoto Protocol. The existing paragraph in Article 18 would become Article 18 paragraph 1. This could read as follows:

Article 18.2. In accordance with Article 18, paragraph 1 above, the procedures and mechanisms relating to compliance under the Kyoto Protocol as adopted by the Conference of Parties serving as the meeting of Parties by decision 27/CMP.1 shall apply.

ANNEX A.I: A new Annex could be added to Annex A to include new gases and to include new sectors. This could read as follows:

ANNEX A.I

Greenhouse gases:

X (agreed new gas)
Y (agreed new gas)
Z (agreed new gas)

Sectors/source categories

Aviation and Maritime Transport

ANNEX C: A new Annex C could be added to include commitments from Annex I Parties for the second commitment period and commitments from Parties not included in Annex I, which have elected to make a commitment inscribed in the second commitment period. This could read as follows:

ANNEX C

Party

**Quantified emission limitation or reduction
commitment for the second commitment period
(2013-2017)**

Australia.....
Austria