



UNITED
NATIONS



**Framework Convention
on Climate Change**

Distr.
GENERAL

FCCC/KP/CMP/2009/3
12 June 2009

Original: ENGLISH

CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE KYOTO PROTOCOL
Fifth session
Copenhagen, 7–18 December 2009

Item X of the provisional agenda

**Proposal from Tuvalu for an amendment to the Kyoto Protocol with
respect to immunities for individuals serving on constituted bodies
established under the Kyoto Protocol**

Note by the secretariat

1. Article 20, paragraph 1, of the Kyoto Protocol provides that “any Party may propose amendments to this Protocol”.
2. Article 20, paragraph 2, of the Kyoto Protocol stipulates that “amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary”.
3. Article 21, paragraph 3, of the Kyoto Protocol provides that “annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary”.
4. In accordance with these provisions Tuvalu, by a communication dated 11 June 2009, transmitted to the secretariat the text of a proposal for an amendment to the Kyoto Protocol.
5. Consequently, on 12 June 2009, the secretariat sent a note verbale containing this text to all National Focal Points for climate change and Permanent Missions to the United Nations, in accordance with the requirements of Article 20, paragraph 2, and Article 21, paragraph 3, of the Kyoto Protocol. The secretariat will also communicate the proposed amendment to the signatories to the Convention and, for information, to the Depositary.

6. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol is invited to consider this proposal at its fifth session.

**Communication dated 11 June 2009 from Tuvalu
addressed to the Executive Secretary of the secretariat of the
United Nations Framework Convention on Climate Change
proposing an amendment to the Kyoto Protocol**

**Amendment to the Kyoto Protocol with respect to Immunities for Individuals Serving on
Constituted Bodies established under the Kyoto Protocol**

The Government of Tuvalu wishes to submit an amendment to the Kyoto Protocol in the form of an additional agreement to the Kyoto Protocol as presented in the following text. The amendment to the Kyoto Protocol is proposed in accordance with Article 20 paragraph 1 of the Protocol. Tuvalu requests the secretariat to circulate this amendment in accordance with Article 20 paragraph 2 of the Protocol.

Ian Fry
International Environmental Officer
Environment Department
Government of Tuvalu

Annex

**AGREEMENT ON IMMUNITIES FOR INDIVIDUALS SERVING ON INSTITUTIONS
ESTABLISHED BY THE CONFERENCE OF PARTIES SERVING AS THE MEETING OF
PARTIES TO THE KYOTO PROTOCOL**

The Parties to this Agreement,

Being Parties to the Kyoto Protocol,

Recalling the Agreement concerning the United Nations and the Federal Republic of Germany concerning the Headquarters of the United Nations Volunteers Programme, 1995:

Further recalling the Agreement among the United Nations, the Government of the Federal Republic of Germany and the Secretariat of the United Nations Framework Convention on Climate Change concerning the Headquarter of the Convention Secretariat;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement, the following definitions shall apply:

1. “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
2. “Executive Secretary” means the Executive Secretary to the United Nations Framework Convention on Climate Change;
3. “individuals” means:
 - (a) any individual chosen or elected by the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol to be represented on the institutions or entities listed in Appendix A to this Agreement,
 - (b) any individual invited as an expert by the respective institutions listed in the Appendix A to this Agreement to appear before meetings of these respective institutions.
4. “institutions” means any boards, bodies, panels, committees or groups established by the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol as are listed in the Appendix to this Agreement or as duly added by amendment;
5. “secretariat” means the institution that is the administrative unit responsible for maintaining records and other secretarial duties for the respective institutions described in the Appendix A and shall include, where appropriate, the secretariat established under Article 8 of the United Nations Framework Convention on Climate Change.

Article 2
General provision

Without prejudice to their legal status, immunities accorded to the Convention secretariat, officials, a Party or Parties, individuals, officials, representatives of Members by the Headquarters Agreement with the Government of the Federal Republic of Germany, each Party to this Agreement shall accord to the individuals identified in this Agreement such immunities as are specified in this Agreement.

Article 3
Immunities of Individuals

1. Individuals serving on constituted bodies and other entities established under the Kyoto Protocol listed in Appendix A shall be accorded such immunities as are necessary for the independent and efficient exercise of their official functions. In particular, 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) Exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles not for personal use or articles the import and export of which is prohibited by law or controlled by the quarantine regulations of the Party concerned; inspection in such a case shall be conducted in the presence of the individual concerned;
- (c) 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 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;
- (d) Inviolability for all papers and documents in whatever form;
- (e) For the purpose of their communication with the constituted bodies and other entities listed in Appendix A 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;
- (f) The same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;
- (g) Applications for visas by the individuals referred to in this paragraph, when accompanied by a document from the secretariat confirming that they are travelling on the business of the constituted bodies and other entities listed in Appendix A shall be dealt with as speedily as possible and granted free of charge.

2. Individuals invited by the constituted bodies and other entities established under the Kyoto Protocol listed in Appendix A, to provide expert advice at meetings of these constituted bodies and entities shall, during the period of their service to the relevant constituted body or other entity, including the time spent on journeys in connection with their service, be accorded the immunities referred to in subparagraphs (d) and (e) of Article 3, paragraph 1 above.

3. Immunities are hereby accorded to individuals represented on institutions listed in Appendix A, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the institutions listed in Appendix A. Consequently, the Executive Director has the right and the duty to waive the immunity of an individual represented on an institution listed in the Appendix A in any case where in the opinion of the Executive Director the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded

Article 4

Respect for laws and regulations

Without prejudice to their immunities, it is the duty of all individuals represented on institutions listed in the Appendix A to respect the laws and regulations of the country in whose territory they may be on the business of the institution listed in the Appendix A or through whose territory they may pass on such business. They also have a duty not to interfere in the internal affairs of that country.

Article 5

Relationship between the Headquarters Agreement and the Agreement

The provisions of this Agreement shall be complementary to the provisions of the UNV Headquarters Agreement for all individuals invited to participate in the official business of the Kyoto Protocol. Insofar as any provision of this Agreement relates 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 conflict, the provisions of this Agreement prevail.

Article 6

Supplementary agreement

This Agreement shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded to individuals represented on any institution listed in the Appendix A by reason of any agreement between the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol with another country with respect to the holding of meetings. This Agreement shall not be deemed to prevent the conclusion of supplementary agreements between the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol and any person represented on any institutions listed in the Appendix A.

Article 7

Settlement of disputes

1. In connection with the implementation of the immunities granted under this Agreement, the Executive Secretary shall make suitable provision for the proper settlement of:
 - (a) disputes of a private law character to which any of the institutions listed in the Appendix A is a party;
 - (b) disputes involving any individuals represented on any institution listed in the Appendix A who by reason of his or her position enjoys immunity, if immunity has not been waived by the Executive Secretary.
2. Notwithstanding paragraph (1) above, the provisions of Article 19 of the Kyoto Protocol on settlement of disputes shall apply *mutatis mutandis* to this Agreement with respect to:

- (a) any dispute between a Party to this Agreement and any other Party to this Agreement concerning the interpretation or application of this Agreement which is not settled by consultation;
- (b) any dispute between an institution listed in the Appendix A and any Party to this Agreement concerning the interpretation or application of this Agreement which is not settled by consultation;
- (c) any dispute between a person represented on an institutions listed in the Appendix A and any Party to this Agreement concerning the interpretation or application of this Agreement which is not settled by consultation;

Article 8
Secretariat

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under the Agreement or by any decision of the meeting of Parties to this Agreement.

Article 9
Additions to or Removal from the Appendix A

The Parties to this Agreement by a decision of a meeting of Parties to this Agreement may add to or remove institutions from the list in the Appendix A to this Agreement.

Article 10
Amendments

Without prejudice to the provisions prescribed in Article 12 to this Agreement, with respect to additions or removals of institutions to the Appendix A, procedures for amendment as prescribed in Article 20 of the Kyoto Protocol, shall apply *mutatis mutandis* to this Agreement.

Article 11
Signature

This Agreement shall be open for signature by all Parties to the Kyoto Protocol at the headquarters of the Convention, Bonn, from X to Y and subsequently at United Nations Headquarters in New York.

Article 12
Ratification

This Agreement is subject to ratification, approval or acceptance. The instruments of ratification, approval or acceptance shall be deposited with the Secretary-General of the United Nations.

Article 13

Accession

This Agreement shall remain open for accession by all Parties to the Kyoto Protocol. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 14

Entry into force

1. The Agreement shall enter into force 30 days after the date of deposit of the tenth instrument of ratification, approval, acceptance or accession.
2. For each Party to the Kyoto Protocol which ratifies, approves or accepts this Agreement or accedes thereto after the deposit of the tenth instrument of ratification, approval, acceptance or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification, approval, acceptance or accession.

Article 15

Provisional application

A State which intends to ratify, approve, accept or accede to this Agreement may at any time notify the depositary that it will apply this Agreement provisionally for a period not exceeding two years.

Article 16

Denunciation

1. A Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.
2. The denunciation shall not in any way affect the duty of any Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

Article 17

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement.

Article 18

Reservations

No reservations may be made to this Agreement.

Article 19

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed the Agreement.

OPENED FOR SIGNATURE at Bonn, from the X(date) to Y(date), in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

APPENDIX A

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