

1 June 2009

ENGLISH ONLY

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

**SUBSIDIARY BODY FOR IMPLEMENTATION**

**Thirtieth session**

**Bonn, 1–10 June 2009**

**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**

**Addendum**

1. In addition to the three submissions contained in document FCCC/SBI/2009/MISC.5 and Add.1, one further submission was received on 1 June 2009.
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

### **Privileges and Immunities for Individuals Serving on Constituted Bodies established under the Kyoto Protocol**

The Government of Tuvalu is pleased to present its views on appropriate treaty arrangements on the issue of privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol.

Tuvalu is of the view that appropriate immunity arrangements should be provided for individuals serving as constituted bodies established under the Kyoto Protocol, although a question still remains as to whether a private citizen can take action against individuals serving on constituted bodies established under international law.

Considering the nature of protection needed for individuals, it is our view that a new legal agreement should only provide immunities and not specific privileges as defined in the context of diplomatic privileges.

Tuvalu is currently of the view that a new legally binding agreement should be developed to afford immunities to individuals serving on constituted bodies under the Kyoto Protocol. We are aware of suggestions by other Parties that new legally binding arrangements for immunities could be included in a 'package' of amendments to the Kyoto Protocol. Until the full extent of this package is known, Tuvalu considers that a stand alone agreement is preferable. Furthermore, the nature of the agreement and the provisions therein, tends to lend itself to a separate agreement, rather than an amendment to the Kyoto Protocol. For instance, procedures for amendments to the list of institutions to the Covenant are proposed to be simpler than the general provisions for amendments to the Kyoto Protocol.

Tuvalu has prepared a draft *Covenant on Immunities for Persons Serving on Institutions Established by the Conference of Parties Serving as the Meeting of Parties to the Kyoto Protocol* (see below). Elements of the Covenant have been drawn from the Convention on Privileges and Immunities for the United Nations (1946) and the Protocol on the Privileges and Immunities of the International Seabed Authority (1998).

The key elements of the draft Covenant include:

1. Definitions: Necessary to define institutions and persons covered by the Covenant;
2. General provision: To establish legal provision of the Covenant;
3. Immunities of Persons: Key element defining immunities for persons covered under the Covenant;
4. Respect for laws and regulations: Ensuring respect for the laws of the country where the business is being undertaken;
5. Relationship between the Headquarters Agreement and the Covenant: Necessary to define relationship;
6. Supplementary agreement: To ensure that the Covenant does not prejudice other privileges and immunity agreements;
7. Settlement of disputes: An important provision to ensure appropriate legal redress;
8. Secretariat: To ensure functionality of the Covenant;
9. Additions to or Removal from the Annex: Establishing a simplified procedure for additions and removal of institutions;
10. Amendments: Apart from the listing or delisting of institutions, the general procedures established under the Kyoto Protocol would apply;
11. Signature: Standard procedures;

12. Ratification: Standard procedures;
13. Accession: Standard procedures
14. Entry into force: A shorter entry into force timeframe is proposed;
15. Provisional application: Allowing for provisional application
16. Denunciation: Standard procedures;
17. Depositary: Standard procedures;
18. Reservations: A no reservation provision;
19. Authentic texts: Standard procedures;

ANNEX: A list containing proposed institutions established under the Kyoto Protocol. This list includes: The Adaptation Fund Board, the Clean Development Mechanism Executive Board, the Joint Implementation Supervisory Committee, the Compliance Committee and the Expert Review Teams established under Article 8 of the Kyoto Protocol.

## **COVENANT ON IMMUNITIES FOR PERSONS SERVING ON INSTITUTIONS ESTABLISHED BY THE CONFERENCE OF PARTIES SERVING AS THE MEETING OF PARTIES TO THE KYOTO PROTOCOL**

The Parties to this Covenant,

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 Covenant, 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. “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 Annex to this Covenant or duly added by amendment;
4. “persons” means:
  - (a) any persons chosen or elected by the Conference of Parties serving as the meeting of Parties to the Kyoto Protocol to be represented on the institutions listed in the Annex to this Covenant,
  - (b) any experts invited by the respective institutions listed in the Annex to this Covenant to serve on various panels, groups or committees;
  - (c) any persons invited by the respective institutions listed in the Annex to this Covenant to appear before meetings of these respective institutions.

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 Annex 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 the legal status, immunities accorded to the Convention secretariat, officials, a Party or Parties, persons, officials, representatives of Members by the Headquarters Agreement with the Government of the Federal Republic of Germany, each Party to this Covenant shall accord to the persons identified in this Covenant such immunities as are specified in this Covenant.

## Article 3 Immunities of Persons

1. Persons as defined by Article 1 of this Covenant shall, while exercising their functions on institutions listed in the Annex and during their journey to and from the place of meeting, or at their place of work shall enjoy the following immunities:

- (a) immunity from legal process of every kind in respect of words spoken or written, and all acts performed by them in the exercise of their functions,
- (b) immunity from personal arrest or detention and from seizure of their personal baggage;
- (c) inviolability for all papers and documents;
- (d) for the purposes of communications with the respective institution or the secretariat, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

2. In order to secure, for the persons represented on institutions listed in the Annex, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of all acts done by them in discharging their functions shall continue to be accorded, notwithstanding that the persons concerned are no longer fulfilling any functions with respect to the institutions listed in the Annex.

3. Immunities are hereby accorded to persons represented on institutions listed in the Annex, 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 Annex. Consequently, the Executive Director has the right and the duty to waive the immunity of a person represented on an institution listed in the Annex 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

4. Persons represented on institutions listed in the Annex shall have insurance coverage against third-party risks in respect of vehicles owned or operated by them, as required by the laws and regulations of the State in which the vehicle is operated.

## Article 4 Respect for laws and regulations

Without prejudice to their immunities, it is the duty of all persons represented on institutions listed in the Annex to respect the laws and regulations of the country in whose territory they may be on the business of the institution listed in the Annex 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 Covenant

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

#### Article 6

#### Supplementary agreement

This Covenant shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded to persons represented on any institution listed in the Annex 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 Covenant 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 Annex.

#### Article 7

#### Settlement of disputes

1. In connection with the implementation of the immunities granted under this Covenant, 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 Annex is a party;
- (b) disputes involving any persons represented on any institution listed in the Annex 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 Covenant with respect to:

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

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 Covenant. The secretariat shall, in addition, exercise the functions assigned to it under the Covenant or by any decision of the meeting of Parties to this Covenant.

#### Article 9

#### Additions to or Removal from the Annex

The Parties to this Covenant by a decision of a meeting of Parties to this Covenant may add to or remove institutions from the list in the Annex to this Covenant.

Article 10  
Amendments

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

Article 11  
Signature

This Covenant 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 Covenant 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 Covenant 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 Covenant 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 Covenant or accedes thereto after the deposit of the tenth instrument of ratification, approval, acceptance or accession, this Covenant 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 Covenant may at any time notify the depositary that it will apply this Covenant 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 Covenant. 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 Covenant to which it would be subject under international law independently of this Covenant.

Article 17  
Depositary

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

Article 18  
Reservations

No reservations may be made to this Covenant

Article 19  
Authentic texts

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

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

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.

**ANNEX**

**Institutions:**

- (a) The Adaptation Fund Board
- (b) The Clean Development Mechanism Executive Board
- (c) The Joint Implementation Supervisory Committee
- (d) The Compliance Committee
- (e) Expert Review Teams established under Article 8 of the Kyoto Protocol

- - - - -