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UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

SUBSIDIARY BODY FOR IMPLEMENTATION

Twenty-sixth session

Bonn, 7–18 May 2007

Agenda item 15 (e)

Administrative, financial and institutional matters

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

Views on 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/2007/MISC.4 and the one submission contained in document FCCC/SBI/2007/MISC.4/Add.1, one further submission has been received on 8 May 2007.
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 BRAZIL

Brazil welcomes the opportunity to present this submission, according to Decision 9/CMP2 Privileges and immunities for individuals serving on constituted bodies established under the Kyoto Protocol.

The Executive Secretary, while this Agreement has not entered into force, shall take action, including through his good offices, where practicable, especially in response to concerns, issues or disputes raised by private or public legal entities involved in the mechanisms established pursuant to articles 6, 12 and 17 of the Kyoto Protocol, to avoid and minimize the risks of disputes, complaints and claims against individuals serving on constituted bodies established under the Kyoto Protocol.

The Executive Secretary shall take action, in particular to:

- a) provide advice and assistance to any individual serving on a constituted body established under the Kyoto Protocol with regard to any concerns or issues raised in connection with the exercise of his or her official functions;
- b) consult, as appropriate, the chair of the relevant constituted body on any concerns or issues relative to privileges and immunities;
- c) contact, as appropriate, the national focal point and the competent authorities of the Party or Parties concerned to discuss the concerns or issues relative to privileges and immunities;
- d) incur necessary expenses, subject to the availability of resources, and within his overall budgetary authority, to cover the activities outlined in this Decision.

**Draft Elements for an Agreement on Privileges and Immunities for
Individuals Serving on Constituted Specialized Bodies under the Kyoto
Protocol**

The Parties to the Protocol,

Considering that the individuals serving on constituted specialized bodies under the Kyoto Protocol must be able to perform their official functions independently and effectively,

Considering that privileges and immunities are not granted for the personal benefit of individuals themselves but in the interests of the constituted specialized bodies under the Kyoto Protocol, ensuring the effective exercise of the functions and efficient accomplishment of the missions of individuals serving on such bodies,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement, the definitions contained in Article 1 of the Convention and Article 1 of the Protocol shall apply. In addition:

The expression “**Convention**” means the United Nations Framework Convention on Climate Change (UNFCCC), adopted in New York on 9 May 1992.

The expression “**Protocol**” means the Protocol to the Convention, adopted in Kyoto on 11 December 1997.

The expression “**Secretariat**” means the Secretariat established by Article 8 of the Convention, which shall serve as the Secretariat of this Agreement.

The expression “**Executive Secretary**” means the Executive Secretary of the UNFCCC Secretariat.

The expression “**individuals serving on constituted specialized bodies under the Kyoto Protocol**” in this context includes members, alternates and experts of the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee and the Compliance Committee, as well as members and experts of the Article 8 of the Kyoto Protocol expert review teams and 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 the Protocol.

Article 2

1. The individuals serving on constituted specialized bodies under the Kyoto Protocol, while exercising their functions, including the time spent on journeys in connection with service on such bodies, shall enjoy the following privileges and immunities:

- a) immunity in respect of words spoken or written, and for all acts performed by them in their official capacity;

- b) immunity from every form of legal process, requisition, confiscation, expropriation, personal arrest or detention and any other form of interference, whether by executive, administrative, judicial or legislative action;
- c) immunity from seizure of their personal baggage; and
- d) inviolability of all official communication, archives, papers and documents in whatever form, files of any type, including electronic means of communication, materials and information being sent or received by mail or electronic form, wherever located and by whoever held belonging to individuals serving on constituted specialized bodies under the Kyoto Protocol.

2. The individuals serving on constituted bodies under the Kyoto Protocol are accorded the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.

3. Privileges and immunities are personal and must be applied to individuals serving on constituted specialized bodies under the Kyoto Protocol and shall be enjoyed in the territory of the host country of official meetings and during the time spent on journeys in connection with service on such bodies, as are necessary for the fulfillment of its purposes. These immunities shall be granted in the interests of the Kyoto Protocol with respect to official acts performed by individuals serving on constituted specialized bodies under the Kyoto Protocol and shall continue for the applicable period of time in order to safeguard the persons concerned even though they are no longer performing their functions on constituted specialized bodies under the Kyoto Protocol.

Article 3

1. Without prejudice to personal privileges and immunities, it is the duty of all persons enjoying privileges and immunities under the present Agreement to respect the laws and regulations of the State Party in the territory of which related meetings of constituted specialized bodies may occur or where the individuals perform their functions under the Kyoto Protocol or through the territory of which they may pass in discharging their duties.

Article 4

Waiver of privileges and immunities

1. Privileges and immunities provided for this Agreement are granted to ensure the independence of the persons to whom they are accorded in the exercise of their functions in connection with the constituted specialized bodies under the Kyoto Protocol. If individuals to whom privileges and immunities have been granted by this Agreement make use of them for their personal benefit or the benefit of a third party they shall be considered as abusing of such privileges and immunities.

Article 5

Abuses of privilege

1. If any Party to this Agreement considers that there has been an abuse of a privilege or/and immunity conferred by this Agreement, consultations shall be held between that State and the Executive Secretary to determine whether any such abuse has occurred.
2. If such consultations fail to achieve a result satisfactory to the State and the Executive Secretary, the State Party has the right to request to the Executive Secretary to suspend the privileges and immunities of the individuals serving on constituted specialized body under the Kyoto Protocol concerned between two sessions of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.
3. The Executive Secretary may suspend the privileges and immunities in light of the provision contained in paragraph one above. The withholding of privileges or immunities must not interfere with the principal functions of the constituted specialized bodies under the Kyoto Protocol.
4. The suspension shall be communicated to the affected individual in writing. The decision regarding the suspension of privileges and immunities referred to in paragraph 3 of this Article must be forwarded for deliberation by the Parties to this Agreement at the subsequent session of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol.
5. The Parties to this Agreement shall make every effort to reach agreement on the waiver of the suspended privileges and immunities by

consensus. If all efforts at consensus have been exhausted, and no agreement reached, the waiver of suspended privileges and immunities shall be adopted by a three-fourths majority of the Parties to this Agreement present and voting at the meeting. The adopted waiver shall be circulated to all Parties to this Agreement.

6. If the waiver of the suspended privileges and immunities is not adopted, the Executive Secretary shall immediately re-establish such privileges and immunities and communicate such decision to the affected individual in writing.

Article 6

Signature and ratification, acceptance, approval or accession

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Protocol. It shall be open for signature at This Agreement shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement.

Article 7

1. No reservations may be made to this Agreement.

Article 8

Entry into force

1. This Agreement shall enter into force on the ninetieth day after the date on which not less than 15 Parties to the Protocol have deposited their instruments of ratification, acceptance, approval or accession.

Article 9

Amendments

1. Any Party may propose amendments to this Agreement.

2. Amendments to this Agreement shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The text of any proposed amendment to this Agreement 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 Protocol and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Agreement by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Agreement.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Article 10

Withdrawal

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 11

The Secretariat

1. The Secretariat established by Article 8 of the Convention shall serve as the Secretariat of this Agreement.

Article 12

Depositary

1. The Secretary General of the United Nations shall be the depositary of the present Agreement.
