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CONSOLIDATED WORKING DOCUMENT*

Addendum

ANNEX

[V.] INSURANCE MECHANISM

* In order to facilitate processing, the consolidated working document is being reproduced as A/AC.237/Misc.17 and Add.1-9. The present addendum is thus an integral part of the whole document, an edited version of which will be published subsequently as an annex to the report of the Committee on the work of its fourth session.

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[ANNEX V
INSURANCE MECHANISM

1. The Parties recognize that:

- (a) There should be established, as an integral part of the Convention, an International Climate Fund to finance measures to counter the adverse consequences of climate change, and a separate International Insurance Pool (hereinafter referred to as "the Pool") to provide financial insurance against the consequences of sea level rise;
- (b) Revenue for the Pool should be drawn from mandatory sources, in particular developed country assessments;
- (c) The financial resources of the Pool should be new, additional and adequate;
- (d) The Pool should be under the control and direction of the Conference of the Parties;
- (e) The resources of the Pool should be used to compensate the most vulnerable small island and low-lying coastal developing countries for loss and damage resulting from sea level rise.

2. The Parties further recognize that the formulation of a scheme for a Pool involves consideration of the following main questions:

- Methods of funding a Pool;
- Classification of the types of loss to be covered by the Pool;
- Criteria for establishing entitlement to claim against the Pool;

- Methods of evaluating loss resulting from sea level rise; and
- Limitations on the amount of compensation payable by the Pool.

3. The Parties accordingly agree as follows:

- (a) The financial burden of loss and damage suffered by the most vulnerable small island and low-lying developing countries (hereinafter referred to as "Group 1 countries") as a result of sea level rise shall be distributed in an equitable manner amongst the industrialized developed countries (hereinafter referred to as "Group 2 countries") by means of a Pool;
- (b) The Pool shall be funded by contributions levied on Group 2 countries;
- (c) The administering authority for the scheme (hereinafter referred to as "the Authority") shall be a body controlled on an equitable basis by the Group 1 and Group 2 countries within the framework of the Conference of the Parties;
- (d) The contributions referred to in paragraph 2 shall be calculated according to a formula modelled on the 1963 Brussels Supplementary Convention on Third Party Liability in the Field of Nuclear Energy, as follows:
 - (i) As to 50%, on the basis of the ratio between the gross national product at current prices of each Group 2 country and the total of the gross national products of all Group 2 countries in the year prior to the year in which the contribution was levied (hereinafter referred to as "the contribution year");
 - (ii) as to 50%, on the basis of the ratio between the total emissions of CO₂ of each Group 2 country and the total CO₂ emissions of all Group 2 countries in the year prior to the contribution year;

- (e) Ten years from the date on which the Convention enters into force the Group 2 countries shall contribute to the Pool an agreed percentage of the total of the gross national products of all Group 2 countries in the year prior to the contribution year, apportioned as in paragraph 4, provided that over the ten year period the rate of global mean sea level rise will have reached an agreed figure. If the rate of global mean sea level rise has not reached the agreed figure by the end of the ten year period, a review shall thereafter be carried out at five-yearly intervals and the obligation of the Group 2 countries to contribute to the Pool will not arise until the year following the review in which it is established to the satisfaction of the Authority that the rate of global mean sea level rise has reached the agreed figure or that absolute global mean sea level rise has reached an agreed figure;
- (f) The insurance fund so constituted shall be invested by the Authority in interest bearing securities as determined by the Conference of the Parties;
- (g) No right to claim against the Pool in respect of loss or damage in any area of a Group 1 country shall arise until:
 - (i) It shall have been established to the satisfaction of the Authority that the rate of global mean sea level rise and the absolute level of global mean sea level rise has reached agreed figures;
 - (ii) It shall have been established to the satisfaction of the Authority that the relative mean sea level rise for any insured area in a Group 1 country has reached an agreed level above base levels determined for each area insured (such relative mean sea level figures having been determined within ten years of the Convention coming into force); and
 - (iii) One year shall have elapsed from the date upon which the figures referred to in sub-paragraph (i) shall have been established as having been reached (that date plus one year being (hereinafter referred to as "the inception date").

- (h) In the first instance those areas of Group 1 countries which would be directly affected by sea level rise to a level of an agreed number of centimetres above the base levels referred to in paragraph (g) (ii) shall be valued for insurance. Marketed assets shall be valued on the basis of gross domestic product for the insured area in question. Non-marketed interests shall be valued on the basis of formulae to be agreed;
- (i) The insured values covered shall be negotiated between the Authority and the Government of each Group 1 country in accordance with valuation principles to be agreed. The same policy conditions shall be applicable to all Group 1 countries;
- (j) All assets and interests intended to be insured under the scheme shall be listed by Group 1 countries for registration with the Authority. Records of assets and interests registered shall be kept up to date. Valuations of assets and interests registered for insurance shall be carried out in accordance with the agreed formulae and shall be assessed as soon as possible after the setting up of the Authority and in any event within ten years of the Convention coming into force. Revaluations shall be carried out periodically as appropriate;
- (k) The first period of insurance shall commence on the inception date as defined in paragraph (g) (iii) and shall cover an agreed period following the inception date. Loss or damage occurring within the first and each following period of insurance, if accepted as a valid claim by the Authority, shall be paid out of the Pool as accumulated at the closing date of the period of insurance;
- (l) If the funds in the Pool are insufficient to meet all valid claims, the claims shall be paid out on an equitable basis. If, after payment out of all valid claims in full, any surplus shall remain in the Pool, the surplus shall be carried over to the credit of the following insurance period;
- (m) Prior to the closing date of the first period of insurance and of each subsequent period, the Conference of the Parties shall, after consultation with the Authority:
 - (i) Fix the length of the next period of insurance;

- (ii) Estimate the probable extent of claims on the Pool during the next insurance period;
 - (iii) Determine the level of contributions to be levied on Group 2 countries sufficient to meet the estimated claims, after taking account of any surplus carried forward from the preceding period.
- (n) Claims against the Pool in respect of insured assets and interests shall be dealt with by the Authority. The Authority shall investigate the cause of any claimed loss, prepare estimates, determine whether the claim comes within the terms of the insurance, evaluate the extent of loss and assess the amount of the claim recoverable by reference to the insured value of the asset or interest and any applicable limits;
- (o) All assets in insured areas of Group 1 countries, whether commercially insured or not, shall in the first instance be valued for insurance, but no claims shall be accepted by the Pool in respect of property which at the time loss or damage occurs is insured commercially, whether by a private insurance company or otherwise;
- (p) In assessing claims against the Pool, the Authority shall determine whether the loss or damage claimed could have been avoided or mitigated by measures which might reasonably have been taken at an earlier stage. In determining whether measures could or could not reasonably have been taken at an earlier stage, account shall be taken, amongst other things, of the availability of funds, both domestic and international, which would have enabled mitigating or preventative measures to have been taken, and the availability of commercial insurance on reasonable terms;
- (q) If differences of opinion arise between the Authority and the participating countries, every effort shall be made to negotiate a resolution, but if this is not achievable disputes shall be submitted to [an] [the] arbitration tribunal under [a special arbitration scheme] [the Convention].]