



The Korean Peninsula Energy Development Organization
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**PROTOCOL BETWEEN THE KOREAN PENINSULA ENERGY
DEVELOPMENT ORGANIZATION AND THE GOVERNMENT OF THE
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA
ON THE JURIDICAL STATUS, PRIVILEGES AND IMMUNITIES,
AND CONSULAR PROTECTION OF THE KOREAN PENINSULA ENERGY
DEVELOPMENT ORGANIZATION IN THE DEMOCRATIC PEOPLE'S
REPUBLIC OF KOREA**

The Korean Peninsula Energy Development Organization (hereinafter referred to as "KEDO") and the Government of the Democratic People's Republic of Korea (the Democratic People's Republic of Korea is hereinafter referred to as the "DPRK"),

Reaffirming that KEDO and the DPRK shall perform their respective obligations faithfully under the Agreement on Supply of a Light-Water Reactor Project to the DPRK between KEDO and the Government of the DPRK, signed on December 15, 1995 (hereinafter referred to as the "Agreement"),

Desiring to conclude a Protocol in accordance with Article IV, paragraphs 6 and 7, of the Agreement in order to specify KEDO's juridical status, privileges and immunities, and consular protection in the DPRK,

Have agreed as follows:

PART I

JURIDICAL STATUS, PRIVILEGES AND IMMUNITIES

ARTICLE 1

JURIDICAL STATUS

KEDO shall possess juridical personality in the DPRK. It shall have the capacity to:

- a. contract;
- b. acquire and dispose of immovable and movable property;
- c. institute legal proceedings;
- d. negotiate with the relevant authorities of the DPRK; and
- e. exercise such other powers as shall be necessary, and agreed between KEDO and the DPRK in furtherance of its purposes and functions, consistent with the provisions of the Agreed Framework Between the United States of America and the Democratic People's Republic of Korea of October 21, 1994 and of the Agreement, including all Protocols entered into pursuant to the Agreement.

ARTICLE 2

ACTIVITIES AREAS

For the purposes of this Protocol, the activities related to the light-water reactor project (hereinafter referred to as the "LWR Project") shall take place in the following areas of the DPRK:

- a. LWR Project Sites: including the construction zone, housing and recreation areas, and other sites specified under the Protocol on Site Take-over, Site Access and Use of the Site.
- b. Related Areas: including locations related to the delivery to the project sites of manpower and materials, including the seaports and airports selected for this purpose and the transportation routes to and from these locations to the LWR Project Sites.
- c. Associated Areas: including locations or districts selected on a temporary or ad hoc basis, for meetings or other events associated with the LWR Project, as well as other locations reached for emergency or other reasons.

ARTICLE 3

PROPERTY AND ASSETS

1. KEDO, its property and assets, wherever located and by whomsoever held in the DPRK shall enjoy immunity from every form of legal, administrative and other similar process except insofar as in any particular case it has expressly waived its immunity in writing. It is, however, understood that no waiver of immunity shall extend to any measure of execution.
2. The offices of KEDO shall be inviolable, and there shall be no entry without express consent of the head of the office. The property and assets of KEDO, wherever located and by whomsoever held in the DPRK shall be immune from search, requisition, confiscation, expropriation and any other interference. The DPRK shall take all appropriate steps to protect KEDO's property, offices and any assets against any intrusion or damage, and to prevent any disturbance of the peace of KEDO's offices.
3. The archives of KEDO, and all its documents shall be inviolable wherever located in the DPRK.
4. Without being restricted by financial controls, regulations or moratoria of any kind,
 - a. KEDO may hold and use funds or currency of any kind for its own purpose.
 - b. KEDO shall be free to transfer currency from one country to the DPRK, from the DPRK to another country, or within the DPRK and to convert any convertible currency held by KEDO into any other convertible currency accepted by the DPRK.
5. KEDO, its property, assets, income and the operations it carries out shall be:
 - a. exempt from all taxes and duties, and charges and fees as agreed between KEDO and the DPRK;
 - b. exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles directly or indirectly related to the LWR Project imported or exported by KEDO. It is understood, however, that articles imported by KEDO under such exemption will not be sold in the DPRK except under conditions agreed with the DPRK; and
 - c. exempt from customs duties and prohibitions and restrictions on imports and exports in respect of publications, including newspapers, books, periodicals, brochures, diagrams, spreadsheets, etc.; audio and video tapes; software; CD-ROMS, etc. The above-mentioned articles will be for the use of KEDO and all personnel sent by KEDO, its contractors and subcontractors, and

members of KEDO delegations, as well as other persons under the auspices of KEDO and their accompanying family members (hereinafter such personnel shall be referred to as a "KEDO person" or "KEDO persons") within the LWR Project Sites and Related Areas.

6. For the purposes of this Article, KEDO's contractors and subcontractors and their property, assets, income and operations, insofar as they are in the DPRK under the auspices of KEDO, shall share in the treatment provided to KEDO and its property, assets, income and operations under this Article. However, property and assets of KEDO's contractors and subcontractors will be supplied and used in implementing the LWR Project.

ARTICLE 4

COMMUNICATIONS FACILITIES

1. KEDO shall enjoy communications treatment not less favorable than that available to any other government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone, facsimile and other communications.
2. KEDO shall have the right to use codes, secure telephones and facsimile facilities, and to dispatch and receive its correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.
3. KEDO shall be permitted by the DPRK to establish means of communications for KEDO offices, in accordance with the terms of the Protocol on Communications.
4. No censorship shall be applied to the official correspondence and communications of KEDO.
5. For the purposes of this Article, KEDO's contractors and subcontractors, insofar as they are in the DPRK under the auspices of KEDO, shall share in the treatment provided to KEDO under this Article, except in the case of the right to use codes and sealed bags. However, communication facilities of KEDO's contractors and subcontractors will not be used in any manner inconsistent with the implementation of the LWR Project.

ARTICLE 5

KEDO STAFF AND MEMBERS OF KEDO DELEGATIONS

1. All KEDO professional staff and members of KEDO delegations shall enjoy the following privileges and immunities:
 - a. immunity from personal arrest or detention and from seizure of their personal baggage;
 - b. immunity from criminal, civil and administrative jurisdiction, and testimonial immunity. However, there shall be no immunity from civil and administrative jurisdiction in the case of actions relating to commercial activity outside official functions;
 - c. inviolability of their private residence and assets, including papers and documents;
 - d. exemption from all taxes and duties, and charges and fees as agreed between KEDO and the DPRK;
 - e. the right to use codes, and to send or receive papers, documents and correspondence by courier or in sealed bags;
 - f. exemption from national service obligations of the DPRK, including administrative mobilization and military obligations;
 - g. exemption from immigration restrictions and alien registration;
 - h. the same privileges in respect of currency or exchange restrictions as are accorded to comparable rank of diplomatic agents under international law and practice;
 - i. the same immunities and facilities in respect of their personal baggage as are accorded to comparable rank of diplomatic agents under international law and practice, unless there are serious grounds for presuming that it contains articles the import or export of which is prohibited by DPRK customs law or controlled by the quarantine regulations of the DPRK. Such inspection shall be conducted only in the presence of a KEDO staff or his or her authorized representative;
 - j. the same repatriation facilities in time of international crisis as diplomatic agents.

2. KEDO non-professional staff (i.e., clerical and other support staff) shall enjoy the privileges and immunities specified in paragraph 1, except that immunity from civil and administrative jurisdiction shall not extend to acts performed outside the course of their duties.
3. The members of a family forming part of the household of a person covered under this Article shall enjoy all the privileges and immunities accorded to that person.
4. Recognizing that privileges and immunities are granted to KEDO staff and members of KEDO delegations pursuant to this Article in the interests of KEDO and not for the personal benefit of the individuals themselves, the Executive Director of KEDO may waive the immunity of a KEDO staff or members of KEDO delegations in writing in any case where the immunity would impede the course of justice and can be waived without prejudice to the interests of KEDO. In the case of the Executive Director, the Executive Board of KEDO may waive immunity.

PART II

CONSULAR PROTECTION

ARTICLE 6

KEDO'S CONSULAR PROTECTION FUNCTION AND CONSULAR DISTRICT

1. KEDO shall exercise consular protection functions in the DPRK and the DPRK shall allow it.
2. The District of KEDO's consular protection shall be the LWR Project Sites, Related Areas and Associated Areas.

ARTICLE 7

EXERCISE OF CONSULAR PROTECTION FUNCTIONS

The office of KEDO shall exercise all consular protection functions through members of its staff on behalf of KEDO, its contractors and subcontractors, and KEDO persons and the crews of the vessels and aircraft staying in the DPRK related to the implementation of the LWR Project. Members of KEDO staff who perform such consular functions shall be known as "KEDO officers in charge of consular affairs" (hereinafter referred to as "KEDO consular officers").

ARTICLE 8

NOTIFICATION OF KEDO CONSULAR OFFICERS

The Executive Director of KEDO shall inform the competent authorities of the DPRK of the names of KEDO consular officers, and any replacements thereof.

ARTICLE 9

CONSULAR PROTECTION FUNCTIONS

Consular protection functions include:

- a. protecting in the DPRK the interests of KEDO, its contractors and subcontractors, and KEDO persons within the limits permitted by international law;
- b. helping and assisting KEDO persons;
- c. visiting any KEDO person who is in prison, custody or detention, to converse and correspond with that person and to arrange for that person's legal representation;
- d. issuing KEDO certificates (in accordance with Article 18) and travel documents to KEDO persons;
- e. transmitting judicial and extra judicial documents;
- f. subject to the practices and procedures obtaining in the DPRK, representing or arranging appropriate representation for a KEDO person before the tribunals and other authorities of the DPRK, for the purpose of obtaining provisional measures for the preservation of the rights and interests of such a KEDO person, where, because of absence or any other reason, such a person is unable at the proper time to assume the defense of his or her rights and interests;
- g. safeguarding the interests of KEDO persons in case of succession mortis causa in the DPRK;
- h. exercising rights of supervision and inspection in respect of vessels and aircraft staying in the DPRK related to the implementation of the LWR Project;

- i. extending assistance to vessels and aircraft staying in the DPRK related to the implementation of the LWR Project and to their crews, including, without limitation, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the DPRK, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and seamen.

ARTICLE 10

CONSULAR COMMUNICATIONS

The DPRK shall not restrict access and communication between a KEDO consular officer and KEDO persons. This communication shall include the use of the postal system, telegrams, facsimile and other internal and international telephone communications. KEDO consular officers will be accorded access to the domestic telephone network of the DPRK to assure that KEDO persons anywhere in the DPRK who are in need of KEDO consular services can reach the KEDO office by telephone and vice versa.

ARTICLE 11

KEDO CERTIFICATES AND CONSULAR ACCESS

1. Persons holding KEDO certificates (issued under Article 18) shall be considered KEDO persons by the competent authorities of the DPRK, and the DPRK shall allow KEDO consular access to such persons to accord protection and services.
2. In order to guarantee consular access to KEDO persons, the DPRK shall ensure freedom of movement and travel to KEDO consular officers for the purpose of exercising their functions within the LWR Project Sites, Related Areas and Associated Areas. KEDO consular officers will provide notification to the competent authorities of the DPRK when they travel to Related Areas. In non-emergency cases, KEDO consular officers may travel to Associated Areas following the notification to and concurrence of the competent authorities of the DPRK. In emergency cases, KEDO consular officers may travel to Associated Areas following notification to the competent authorities of the DPRK.

ARTICLE 12

RIGHT TO CONTACT AND VISIT PERSONS ARRESTED OR DETAINED

Regardless of the location or other circumstance:

1. The competent authorities of the DPRK shall promptly, but not later than two days, inform the KEDO office if a KEDO person is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to KEDO office by the KEDO person arrested, in prison, custody or detention shall be forwarded without delay. The competent authorities of the DPRK shall inform the KEDO person concerned without delay of his or her rights under this paragraph.
2. A KEDO consular officer shall have the right to visit and converse with a KEDO person arrested or detained or in custody and to assist the person in obtaining legal representation and an interpreter. The competent authorities of the DPRK shall grant a KEDO consular officer access to such a KEDO person as soon as possible but not later than two days of such request having been made to the authorities of the DPRK, and make arrangements for such access to be permitted on a regular basis. A KEDO consular officer shall also have the right to visit any KEDO person who is in prison, custody or detention in pursuance of a judgement.

ARTICLE 13

PROVISION OF NECESSITIES

The competent authorities of the DPRK shall permit a KEDO consular officer to provide parcels containing food, clothing, medicine and other necessities to a KEDO person who may be under arrest or detention.

ARTICLE 14

COOPERATION OF DPRK AUTHORITIES

The competent authorities of the DPRK shall, upon the request from a KEDO consular officer, provide full cooperation in ascertaining the whereabouts of a KEDO person. The competent authorities of the DPRK shall do everything possible to provide all relevant and available information thereof.

ARTICLE 15

NOTIFICATION OF DEATH OR ACCIDENTS

In case the competent authorities of the DPRK learn that a KEDO person has died, or is missing, injured or hospitalized in the DPRK, the DPRK shall notify a KEDO consular officer without delay. The competent authorities of the DPRK shall, upon the request of a KEDO consular officer, provide all relevant and available information pertaining to the death of a KEDO person or other accidents involving him or her in the DPRK. A KEDO consular officer shall have the right to make arrangements necessary for medical evacuation or disposition of the corpse of such a KEDO person.

ARTICLE 16

CONCURRENCE OF CONSULAR FUNCTIONS

Nothing in this Protocol limits or shall be interpreted in any way as limiting the right of any government to exercise consular functions on behalf of its own nationals who are KEDO persons entitled to consular protection from KEDO.

PART III

SAFETY PROTECTION

ARTICLE 17

PROTECTION OF THE SAFETY OF KEDO CONTRACTOR PERSONS AND THEIR PROPERTY

In conformity with the purposes of implementing the LWR Project, the DPRK shall protect the safety of all personnel sent by KEDO's contractors and subcontractors, as well as other persons staying in the DPRK under the auspices of KEDO and their family members (hereinafter referred to as "KEDO contractor persons") and the property of those KEDO contractor persons. Steps toward this end shall include the following:

1. The DPRK shall not arrest or detain any KEDO contractor persons.
2. KEDO contractor persons shall not be subject to the jurisdiction in any form of the DPRK, or to measures of execution in the DPRK.

3. The DPRK shall not interfere with the performance or personal life of KEDO contractor persons within the LWR Project Sites, Related Areas and Associated Areas. KEDO shall be responsible for the maintenance of order within the LWR Project Sites and the DPRK shall not interfere with KEDO's maintenance of order.
4. The DPRK shall not require any KEDO contractor persons to follow DPRK customs, and shall not impose any political or social obligations on KEDO contractor persons.
5. KEDO contractor persons shall not be subject to national service obligations of the DPRK including administration mobilization and military obligations.
6. The DPRK shall provide KEDO contractor persons with all repatriation facilities in case of emergencies.
7. KEDO contractor persons, at all times and under all circumstances, are entitled to enjoy the consular protections under Part II of this Protocol.
8. The DPRK shall not seize, search, or violate the personal property, including personal baggage, papers and documents or residences of KEDO contractor persons. Customs clearance shall be done in accordance with the terms or the Protocol on Transportation.
9. KEDO contractor persons shall be exempt from all taxes and duties, and charges and fees as agreed between KEDO and the DPRK.
10. If the DPRK considers that there has been an abuse of a protection under this Part of the Protocol for an act neither directly nor indirectly related to implementing the purposes and functions of KEDO, consultations between KEDO and the DPRK shall be held to decide on the appropriate course of action. Holding such consultations shall not limit or affect the protection offered under this Part in any way, unless otherwise decided as a result of the consultations.

PART IV

COOPERATIVE MEASURES

ARTICLE 18

NOTIFICATION AND VISA PROCEDURES

1. The Executive Director of KEDO shall inform the appropriate authorities of the DPRK of the names and the titles of the personnel entitled to enjoy the privileges and immunities under Part I, Article 5.
2. The DPRK shall speedily issue identification cards to all personnel entitled to enjoy privileges and immunities under Part I, Article 5 who are assigned to the KEDO office.
3. KEDO shall issue identification certificates (referred to as "KEDO certificates") to KEDO staff, members of KEDO delegations and KEDO contractor persons. KEDO certificates shall be recognized as equivalent to passports and accepted as valid travel documents by the DPRK.
4. Upon the request of KEDO, the DPRK shall issue visas valid for one year and multiple entries to personnel entitled to enjoy privileges and immunities under Part I, Article 5 who are assigned to the KEDO office. The DPRK shall process such visas expeditiously and free of charge. In addition, facilities for speedy travel shall be granted.
5. KEDO contractor persons shall enter and exit under entry and exit procedures of the DPRK for the LWR Project, which include visa-free entry and exit procedures at the entry and exit points specified in the Protocol on Transportation. In cases where visas are required, the competent authorities of the DPRK shall issue them expeditiously and free of charge.
6. KEDO contractor persons shall not be subject to alien registration or undue immigration restrictions of the DPRK.

ARTICLE 19

RESIDUAL IMMUNITIES AND PROTECTIONS

The immunities under Part I, Article 5 and the safety protections under Part III of this Protocol shall continue to be accorded to personnel with respect to activities undertaken in the course of implementing the LWR Project, notwithstanding that the personnel concerned are no longer acting on behalf of KEDO.

ARTICLE 20

OTHER PRIVILEGES AND IMMUNITIES

This Protocol does not affect and shall not be interpreted in any way to affect the privileges and immunities specified in the Agreement and other Protocols entered into pursuant to the Agreement. Both sides recognize that the privileges and immunities and other protections reflect the unique circumstances of the LWR Project.

ARTICLE 21

RESPECT FOR RELEVANT DPRK LAW AND MUTUAL ASSISTANCE

1. Both sides shall further discuss and agree upon details on practical, legal matters for the implementation of this Protocol. KEDO shall cooperate with the appropriate authorities of the DPRK to facilitate the proper administration of justice, in all instances where such cooperation will not interfere with KEDO's work under the Agreement.
2. All personnel sent to the DPRK by KEDO, its contractors and subcontractors undertake to respect the relevant laws of the DPRK, as shall be agreed between KEDO and the DPRK, and to conduct themselves at all times in a decent and professional manner.
3. KEDO may request the assistance of the appropriate authorities of the DPRK in cases where KEDO deems it necessary, such as investigations involving a DPRK citizen or authorities, and at the request of KEDO, the DPRK shall render such assistance to KEDO.

PART V

GENERAL PROVISIONS

ARTICLE 22

DISPUTE RESOLUTION

Article XV of the Agreement shall apply to any disputes arising out of interpretation or implementation of this Protocol.

ARTICLE 23

ENTRY INTO FORCE AND AMENDMENTS

1. This Protocol shall enter into force on the date of its signature.
2. This Protocol may be amended by written agreement between the two parties. Any amendment shall enter into force on the date of its signature.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed the Protocol.

Done at New York City on the 11th of July, 1996, in duplicate in the English language.

For the Korean Peninsula Energy
Development Organization

For the Government of the Democratic
People's Republic of Korea

Stephen W. Bosworth
Executive Director
Korean Peninsula Energy
Development Organization

Ho Jong
Ambassador-at-Large
Ministry of Foreign Affairs
Democratic People's Republic of Korea