

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2019 Nr. 49

A. TITEL

*Overeenkomst tot oprichting van de Square Kilometre Array Observatory (met Protocollen);
Rome, 12 maart 2019*

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 013341 in de Verdragenbank.

B. TEKST¹⁾

Convention establishing the Square Kilometre Array Observatory

The Parties to this Convention,

DESIRING to deliver one of the most visionary and ambitious science projects of the 21st century involving significant international cooperation;

COMMITTED to testing the limits of engineering and scientific endeavour and to exploring fundamental questions in astronomy and physics;

NOTING that the Square Kilometre Array will be a next generation radio telescope facility that has a discovery potential far greater than any previous instrument;

RECOGNISING that the scale and ambition of the Square Kilometre Array demand a global effort with long-term investment;

EMBRACING the potential for scientific discovery to contribute to advances in technology and innovation and to deliver a broader benefit for industry and society;

DEDICATED to realising the full ambition of the Square Kilometre Array Project;

ACKNOWLEDGING the preparatory work done by the Square Kilometre Array Organisation in the establishment of the Square Kilometre Array Observatory;

COMMITTED to an organisation where diversity and equality are promoted and respected;

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Convention and its Protocols:

- a) "SKAO" means the Square Kilometre Array Observatory;
- b) "SKA" means the Square Kilometre Array radio telescope facility;
- c) "SKA Project" means the global effort to build, maintain, operate and ultimately decommission the SKA;
- d) "SKA-1" means the initial phase of the SKA Project;
- e) "Headquarters Country" means the State in which the SKAO global headquarters is located;
- f) "Host Country" means a State in which the SKA Project is hosted;
- g) "Member" means a State or an international organisation that is a party to this Convention;
- h) "Associate Member" means a State or an international organisation that is not a party to this Convention

¹⁾ Het voor eensluidend gewaarmerkt afschrift is nog niet ontvangen. In de tekst kunnen derhalve onjuistheden voorkomen die in een volgend Tractatenblad zullen worden gecorrigeerd.

and which is admitted to the SKAO in accordance with Article 6, paragraph 3;

- i) "Fair Work Return" is identified to have been achieved when the cumulative value of the goods, works and services provided by a Member through the procurement process, broadly reflects the financial contribution committed by that Member;
- j) "Official Activities" means all activities undertaken pursuant to the Convention including the SKAO's administrative activities;
- k) "Staff" means members of staff of, or secondees to, the SKAO; and
- l) "Funding Schedule" means a schedule that prescribes financial contributions, and terms and conditions, of Members and Associate Members for the construction and operation of the SKAO.

Article 2

Establishment and Status of the SKAO

1. The SKAO is hereby established as an international organisation with legal personality. It shall have such capacities as may be necessary for the exercise of its functions and fulfilment of its purposes, including:
 - a) To contract;
 - b) To acquire and dispose of immovable and movable property; and
 - c) To institute and be a party to legal proceedings.
2. The Headquarters Country shall be the United Kingdom of Great Britain and Northern Ireland, and the global headquarters of the SKAO shall be at Jodrell Bank.
3. The SKAO shall conclude agreements with the Headquarters Country and Host Countries concerning the hosting of the SKAO and the SKA Project. Such agreements shall be approved by unanimous vote of the Council.

Article 3

Purpose of the SKAO

1. The purpose of the SKAO shall be to facilitate and promote a global collaboration in radio astronomy with a view to the delivery of transformational science. The first objective of this global collaboration shall be the implementation of the SKA Project.
2. Subject to a decision by the Council, the SKAO may commence, or contribute to, other projects, beyond the SKA Project, that are related to radio astronomy science, technology and their applications. Participation by Members and Associate Members in such other projects shall be optional.

Article 4

Privileges and Immunities

1. All Members shall grant the privileges and immunities as set out in the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory, which shall be annexed to (Annex A), and form an integral part of, this Convention.
2. All privileges and immunities are provided for the sole purpose of facilitating the Official Activities of the SKAO and delivery of its objectives.

Article 5

SKA Project

1. The SKA Project shall be designed to be capable of transformational science, with a combination of sensitivity, angular resolution, and survey speed far surpassing current state-of-the-art instruments at relevant radio frequencies.
2. The SKA Project shall be delivered in phases, beginning with SKA-1, with the active intent to proceed to subsequent phases.
3. SKA-1 shall be hosted in Australia and the Republic of South Africa. The components of SKA-1 to be located in each Host Country, and components of the global headquarters of the SKAO to be located in the Headquarters Country, shall be described in a technical document to be approved by unanimous decision of the Council.

4. Subsequent phases of the SKA Project shall commence following approval by decision of the Council. Participation in the construction of such subsequent phases shall be optional. Financial contributions towards the implementation of a subsequent phase shall be determined in accordance with the Financial Protocol of the Square Kilometre Array Observatory.

Article 6

Membership and Other Forms of Cooperation

1. The Parties to this Convention shall be the Members of the SKAO. Membership shall be open to States and international organisations.
2. The Council may decide, by unanimous vote, to admit new Members into the SKAO in accordance with this Convention and on such terms as it determines. When the Convention enters into force for that State or international organisation according to Article 19, paragraph 4, it shall become a Member and shall be bound by the terms determined by the Council.
3. The Council may decide, by unanimous vote, to admit Associate Members to the SKAO on such terms as it determines. Such terms shall ensure that Associate Members do not enjoy benefits equivalent to those of Members. Associate membership shall be open to States and international organisations.
4. The Council may decide, by unanimous vote, to invite other entities such as States, international organisations, and institutions, to cooperate with the SKAO. The SKAO may enter into agreements and arrangements with them to this effect. These agreements and arrangements require the approval by decision of the Council.

Article 7

Organs

The SKAO shall consist of the Council and a Director-General assisted by Staff.

Article 8

Council

1. The Council shall be the governing body of the SKAO. Each Member shall be represented on the Council by up to two representatives, one of whom shall be the voting representative who shall be authorised to act and vote on its behalf. Representatives may be assisted by advisers.
2. The Council shall be responsible for the overall strategic and scientific direction of the SKAO, its good governance, and the attainment of its purposes. It shall have all necessary and proper authority to discharge effectively its responsibilities.
3. In addition to the functions set forth elsewhere in this Convention, the Council shall:
 - a) Appoint the Director-General and approve the appointment of other senior staff, as required in accordance with the Staff Regulations;
 - b) Approve the policies, rules, and regulations of the SKAO, including with regard to scientific, technical, financial and administrative matters, as well as access to the SKA and its data;
 - c) Approve the budget and supervise expenditure and financial activity;
 - d) Appoint auditors;
 - e) Approve and publish the audited annual accounts;
 - f) Approve and publish annual reports; and
 - g) Take further measures, as necessary for the functioning of the SKAO.
4. For any meeting, convened either in person or remotely, and for any decision of the Council a quorum of two-thirds of Members shall be required. Members not eligible to vote shall not be considered part of the quorum.
5. Each Member shall have one vote in the Council, unless otherwise specified.
6. Decisions by the Council shall be taken by a vote of a two-thirds majority, unless otherwise specified.
7. In determining the unanimity or majorities provided for in this Convention or the Financial Protocol of the Square Kilometre Array Observatory, account shall not be taken of a Member which is absent, is not participating in the vote, abstains or has no right to vote.

8. The choice of the Headquarters Country and each Host Country may be amended, subject to Article 15, after a unanimous vote of the Council.
9. For projects approved in accordance with Article 3, paragraph 2, Members shall not have the right to vote unless they have agreed to make a financial contribution.
10. Subject to the terms of this Convention, the Council shall determine its own Rules of Procedure.
11. The Council shall elect a Chairperson and Vice-Chairperson for a term of office of two years. The Chairperson and Vice-Chairperson may not be elected more than twice.
12. The Chairperson shall convene the meetings of the Council in accordance with its Rules of Procedure. The Council shall meet as and when required, but not less than once per year.
13. The Council shall establish a Finance Committee on which every Member shall be represented. The Council shall establish such other committees as may be necessary to accomplish the purpose of the SKAO. The Council shall define the mandate and membership of such committees.

Article 9

Director-General and Staff

1. The Council shall appoint a Director-General for a fixed period and may terminate the appointment at any time in accordance with Staff Regulations to be approved, by decision, by the Council. The Director-General shall act as the chief executive officer of the SKAO and act as its legal representative. The Director-General shall report to the Council.
2. The functions of the Director-General shall be to:
 - a) Exercise project, operational and financial authority as provided by the Council;
 - b) Submit an annual report to the Council;
 - c) Submit budget estimates to the Council;
 - d) Submit audited annual accounts to the Council;
 - e) Attend Council meetings in a consultative capacity unless the Council otherwise decides;
 - f) Be responsible for general management of SKAO;
 - g) Be accountable for health and safety; and
 - h) Perform all other duties as delegated by the Council.
3. Subject to Article 8, paragraph 3 (a), the Director-General shall be assisted by such scientific, technical, and administrative staff as the Director-General may consider necessary within the limits authorised by the Council. Such staff shall be engaged and dismissed by the Director-General in accordance with the Staff Regulations.
4. The Director-General and Staff shall respect the international character of the SKAO and perform their duties in the sole interests of the SKAO.

Article 10

Financial Matters

1. The SKAO shall conduct its financial affairs in accordance with the Financial Protocol of the Square Kilometre Array Observatory, which shall be annexed to (Annex B), and form an integral part of, this Convention.
2. Members and Associate Members shall make financial contributions in accordance with Funding Schedules that have been approved by the Council in accordance with the Financial Protocol of the Square Kilometre Array Observatory.
3. The Funding Schedules may be amended in accordance with the Financial Protocol of the Square Kilometre Array Observatory.
4. Members and Associate Members shall have shares in the SKA Project proportional to their cumulative committed financial contributions to the SKA Project.

Article 11

Intellectual Property Rights

1. The SKAO shall have an Intellectual Property Policy, approved by the Council by unanimous vote. Any amendment by the Council of the Intellectual Property Policy shall require a two-thirds majority, except for those provisions that have been identified in the policy as requiring unanimity to be amended.
2. The policy shall ensure that intellectual property is managed to minimise intellectual property-related risk and cost to the SKAO.
3. The policy shall define the basis on which any entities that participate in projects undertaken by the SKAO are able to exploit, beyond the scope of the SKA, any innovations that arise from their participation.
4. The Council may decide to grant access to foreground intellectual property through the grant of non-exclusive, worldwide, royalty-free, perpetual, and irrevocable sub-licences to SKA contributors, under which they will be permitted to use those innovation and work products, subject to obtaining appropriate licences under existing background intellectual property rights and third party intellectual property rights, for SKA Project purposes and other non-commercial research and education purposes, provided that such sub-licences should not cover activities undertaken by sub-licensees in competition with the owner of the foreground intellectual property.

Article 12

Procurement

1. The primary objective of procurement shall be to acquire successfully the goods, works and services required to deliver the SKA Project through financial contributions, whether cash or in-kind contributions or a combination of both, while effectively managing risk.
2. A Procurement Policy shall be approved by the Council by unanimous vote. Any amendment by the Council of the Procurement Policy shall require a two-thirds majority, except for those provisions that have been identified in the policy as requiring unanimity to be amended.
3. Procurement shall be implemented based on principles of Fair Work Return, equity, transparency and competitiveness.

Article 13

Operations and Access

1. The SKAO shall conduct its operations in accordance with the Operations Policy, as approved by the Council by unanimous vote. Any amendment by the Council of the Operations Policy shall require a two-thirds majority, except for those provisions that have been identified in the policy as requiring unanimity to be amended.
2. Access to time on SKA telescopes and other SKA resources shall be in accordance with the Access Policy, as approved by the Council by unanimous vote. Any amendment by the Council of the Access Policy shall require a two-thirds majority, except for those provisions that have been identified in the policy as requiring unanimity to be amended.
3. The SKAO will operate on the principle that Members' and Associate Members' access is proportional to their share in the project, except as decided by unanimous vote of the Council.

Article 14

Dispute Settlement

Any dispute arising between Members or between a Member, or Members, and the SKAO with regard to the interpretation or application of this Convention which cannot be settled by negotiation shall, at the request of any of the parties to the dispute, be referred to the Permanent Court of Arbitration under the relevant Arbitration Rules of the Permanent Court of Arbitration, unless the parties to the dispute have agreed to another mode of settlement.

Article 15

Amendments

1. Any Member wishing to propose an amendment to this Convention and its Protocols shall notify the Director-General of its proposal. The Director-General shall promptly circulate any such proposals to all Members. Following a subsequent period of at least three months the Chairperson shall convene a meeting of the Council at which it shall consider whether to adopt and recommend the amendment to Members.
2. Amendments adopted and recommended by the Council shall enter into force for all Members after all Members have accepted them in accordance with their own domestic requirements. Such amendments shall enter into force thirty days after the last notification of acceptance of the proposed amendment has been received by the depositary.

Article 16

Withdrawal

1. Ten years after the date this Convention enters into force any Member may at any time withdraw from this Convention, by giving written notice of its withdrawal to the depositary. Withdrawal shall be allowed on the condition that the withdrawing Member has fulfilled its obligations, unless the Council decides to waive such obligations.
2. A withdrawing Member shall remain liable for all direct and contingent obligations to the SKAO to which it was subject on the date the withdrawal notice was received by the depositary, until the point at which the withdrawal becomes effective. So long as the withdrawing Member has fulfilled its obligations, withdrawal shall become effective twelve months after the withdrawal notice was received, unless the Council decides that earlier withdrawal should be permitted.
3. A withdrawing Member shall have no claim on the assets of the SKAO or on the amount of the financial contributions it has already made. A withdrawing Member shall not incur any new liability for obligations resulting from operations of the SKAO effected after the date on which the withdrawal notice is received by the depositary.

Article 17

Termination and Dissolution

1. The Council may decide, by a unanimous vote, to terminate this Convention at any time. Termination shall not take effect until such time as the SKAO's obligations to the Host Countries, including in relation to the decommissioning of the SKA, have been discharged. Once discharged, the Council shall decide the date upon which termination will take effect. Upon termination, the SKAO shall be dissolved and cease to exist as an International Organisation. Any assets shall be liquidated and any proceeds distributed among Members *pro rata* to the contributions they have made since becoming Members.
2. Any outstanding liabilities incurred by SKAO shall be borne by Members *pro rata* to, and to the extent of, the financial contributions they have been required to provide the SKAO since becoming Members as at the time of the decision to terminate. In case that the obligations or liabilities incurred by SKAO exceed total funds then available to SKAO, the Council shall, by unanimous decision, seek to increase each Member's contribution for such obligation or liability.

Article 18

Failure to Fulfil Obligations

When the Council decides that a Member has failed to fulfil its obligations arising out of this Convention, including the payment of financial contributions, it shall be called upon by the Council to rectify the failure. If the said Member does not respond to the Council's request in the time imparted to it, the Council voting rights of that Member shall be automatically suspended. The other Members of the Council may decide to take such other action as they consider appropriate in the circumstances, which may include a unanimous decision of the other Members of the Council that the Member ceases to be a Member of the SKAO.

Article 19

Signature, Ratification, Acceptance, Approval, Accession and Entry into Force

1. This Convention shall be open for signature in Rome on 12 March 2019 and thereafter with the Depositary from 13 March 2019 for all States listed below:

Australia
The People's Republic of China
The Republic of India
The Italian Republic
The Kingdom of the Netherlands
New Zealand
The Portuguese Republic
Kingdom of Sweden
Republic of South Africa
United Kingdom of Great Britain and Northern Ireland

2. This Convention shall be subject to ratification, acceptance or approval by the States listed in paragraph 1 in accordance with their domestic requirements. It shall enter into force thirty days after the date on which instruments of ratification, acceptance or approval have been deposited by Australia, the Republic of South Africa, United Kingdom of Great Britain and Northern Ireland and two other signatories.

3. This Convention is open to accession by States not listed in Article 19, paragraph 1, and international organisations, subject to Article 6, paragraph 2.

4. For any State or international organisation that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Convention, this Convention shall enter into force thirty days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 20

Depositary

1. The Government of the United Kingdom of Great Britain and Northern Ireland shall be the depositary for this Convention.

2. The depositary shall:

- a) Notify signatories and Members of each signature and the date thereof, and the date of entry into force of this Convention;
- b) Notify signatories and Members of each deposit of instruments of ratification, acceptance, approval or accession and the date of entry into force of the Convention for that State or international organisation;
- c) Inform the Members of the dates of notifications of acceptance and of the date of the entry into force of an amendment;
- d) Inform the Members of the date of a withdrawal notice and of the date the withdrawal takes effect;
- e) Inform the Members of the date of termination of the Convention; and
- f) Inform the Members of a decision of the Council, in accordance with Article 18, that a Member ceases to be a Member of the SKAO and of the date that decision takes effect.

3. Upon the entry into force of this Convention, the depositary shall register it with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Convention.

OPENED for signature in Rome on 12 March 2019 in the English language, in one original.

Annex A

Protocol on Privileges and Immunities of the Square Kilometre Array Observatory

The Parties to the Convention have agreed as follows:

Article 1

Definitions

For the purposes of this Protocol:

- a) "Expert" means a person named by the SKAO as being in the service of the SKAO for a defined period of time;
- b) "Family" means, with respect to any person, the spouse or partner and dependent children forming part of such a person's household;
- c) "Premises" means sites, buildings and facilities or parts thereof, irrespective of ownership, that are occupied exclusively by the SKAO for the performance of its Official Activities;
- d) "Representatives" means representatives of the Members in attendance at meetings of organs or committees of the SKAO and includes designated delegates, alternates, advisors and secretaries of delegations;
- e) "Archives" means correspondence, documents, manuscripts, photographs, films, recordings, computer and media data, data carriers and any other similar material belonging to or held by the SKAO and all the information contained therein; and
- f) "Immunity from legal process" means immunity from jurisdiction and immunity from execution measures.

Article 2

Immunity from Legal Process

Within the scope of its Official Activities, the SKAO shall have Immunity from legal process except:

- a) To the extent that by a decision of the Council the SKAO waives it in a particular case;
- b) In respect of a civil action by a third party for damage arising from an accident caused by a vehicle belonging to or operated on behalf of the SKAO or in respect of a traffic offence;
- c) In respect of an arbitration award made under Article 14 of the Convention;
- d) In the event of an attachment order, pursuant to a decision by the administrative or judicial authorities, of the salaries, wages and emoluments owed by the SKAO to a member of its Staff; and
- e) In respect of a counter claim relating directly to a main claim brought by the SKAO.

Article 3

The Premises

1. The Premises shall be inviolable. Any person having the authority to enter any place under any legal provision shall not exercise that authority in respect of the Premises unless permission to do so has been given by the Director-General or by the head of the Premises designated by the Director-General and acting on the Director-General's behalf.
2. Such permission may be presumed in the event of fire or other emergencies requiring prompt protective action. Any person who has entered the Premises with the presumed permission of the Director-General or by the Head of the Premises shall, if so requested by the Director-General or by the Head of the Premises, leave the Premises immediately.
3. The Director-General shall notify each relevant Member State of the names of Heads of Premises located within its jurisdiction.
4. The SKAO shall not allow its Premises to be used for any unlawful activity or to act as a haven or refuge to any person facing any judicial or administrative procedures in a Member State.
5. The Archives wherever they may be located and by whomsoever held shall be inviolable at all times.

Article 4

Exemption from Direct Taxation

Within the scope of its Official Activities, the SKAO, its assets, property, income, gains, operations and transactions shall be exempt from all direct taxes, with the exception of the proportion which represents a charge for specific services rendered.

Article 5

Exemption from Customs and Indirect Taxes

1. The SKAO shall be exempted from value added tax in respect of goods and services (including publications, information material and motor vehicles), which are of substantial value and necessary for Official Activities. The exemption may be provided at the point of sale or through a subsequent reimbursement, consistent with the relevant practice followed by each Member State. Restrictions on the number of motor vehicles exempt from value added tax may be applied, consistent with a Member State's domestic legislation and policy.
2. The SKAO shall be exempted from duties (whether of customs or excise) and taxes on the importation of goods, including publications, which are of substantial value, imported by it for its official use.
3. Such exemptions shall be subject to compliance with such conditions as the Member State may prescribe, including for the protection of the revenue and import or export controls.
4. No exemption shall be granted under this Article in respect of goods purchased or imported, or services provided, for the personal benefit of Staff.
5. National laws and regulations concerning the importation and exportation of goods and services continue to apply in all other aspects, including biosecurity and quarantine laws and regulations.
6. Member States may exempt any in-kind contributions they make to the SKAO from value added tax.

Article 6

Resale of Goods

1. Goods which have been acquired or imported under Article 5 shall not be sold, given away, hired out or otherwise disposed of in the territory of a Member State unless that Member State has been informed beforehand and any relevant duties and taxes have been paid and any conditions agreed with that Member State have been complied with.
2. The duties and taxes to be paid shall be calculated by the Member State on the basis of the rates prevailing and the value of the goods on the date at the time of disposal. The Member State shall provide the SKAO with the necessary instructions regarding the procedure to be followed.

Article 7

Privileges and Immunities of Staff including the Director-General

1. The Director-General and all Staff who discharge their functions in a Member State shall, together with members of their Family, and except to the extent that in any particular case such immunity has been waived by the competent authority set out in Article 11, enjoy the following privileges and immunities:
 - a) Immunity from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their employment with the SKAO. This immunity shall not apply to road traffic offences and damage resulting from a vehicle driven by them;
 - b) The same exemptions from measures restricting immigration and government aliens' registration that are generally accorded to members of personnel of international organisations;
 - c) Exemption from compulsory public service;
 - d) Inviolability of all their official papers and documents related to the exercise of their function within the scope of the Official Activities of the SKAO;
 - e) Salaries and emoluments, but not pensions and annuities, paid by SKAO to its Director-General and Staff in respect of their active service with SKAO shall be exempt from domestic income tax;
 - f) In the event that it establishes its own social security scheme, the SKAO, its Director-General and Staff shall be exempt from all compulsory contributions to domestic social security bodies, and shall not be entitled to such benefits, subject to agreement between the SKAO and Members; and
 - g) The right to import duty-free their furniture and personal effects (including at least one motor vehicle) at the time of first taking up their post and the right on the termination of their functions to export duty-free their furniture and personal effects, subject in both cases to the conditions governing the disposal of goods imported into the Member State duty-free and to the general restrictions applied in Member States to imports and exports.
2. No Member State is obliged to extend the privileges and immunities referred to in the present Article, paragraph 1(b), (c), (e), (f) and (g), to its own nationals or permanent residents.

Article 8

Privileges and Immunities of Representatives

1. Representatives who discharge their functions in a Member State shall, and except to the extent that in any particular case such immunity has been waived by the competent authority set out in Article 11, enjoy the following privileges and immunities:
 - a) Immunity from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after they cease to be a Representative. This immunity shall not apply to road traffic offences and damage resulting from a vehicle driven by them;
 - b) Inviolability of all their official papers and documents related to the exercise of their function within the scope of the Official Activities of the SKAO; and
 - c) Member States shall take measures to facilitate the free movement of Representatives in the exercise of their functions, in accordance with domestic law.
2. The SKAO shall provide suitable accreditation or authorisation documentation to Representatives.
3. No Member State is obliged to extend the privileges and immunities referred to in the present Article, paragraph 1 (c), to its own nationals or permanent residents.

Article 9

Experts

1. Experts shall enjoy inviolability for all their official papers and documents to the extent necessary for the carrying out of their functions on behalf of the SKAO, including during journeys made in carrying out their functions.
2. Member States shall take measures to facilitate the free movement of Experts in the exercise of their functions, in accordance with domestic law.

Article 10

Cooperation with the Authorities of Member States

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under Articles 7, 8 and 9 to respect the laws and regulations of the Member State in whose territory they may operate in their official capacity.
2. The SKAO shall cooperate at all times with the relevant authorities of Member States to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges and immunities referred to in this Protocol.

Article 11

Purpose and waiver of Privileges and Immunities

1. The privileges and immunities provided for in this Protocol are not established for the personal benefit of those persons in whose favour they are accorded. Their purpose is solely to ensure unimpeded functioning of the SKAO and the complete independence of the persons to whom they are accorded.
 2. Competent authorities have a duty to waive any relevant immunity in all cases wherever retaining it would impede the course of justice and it can be waived without prejudicing the interests of the SKAO.
 3. The competent authorities referred to in the present Article, paragraph 2, are:
 - a) Member States, in the case of their Representatives;
 - b) The Council, in the case of the Director-General; and
 - c) The Director-General in the case of all Staff, Family members of Staff, Experts or any other person or persons enjoying immunities under this Protocol.
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Annex B

Financial Protocol of the Square Kilometre Array Observatory

The Parties to the Convention,

AIMING to provide a policy framework under which all financial transactions and other such related financial matters will take place;

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Protocol:

- a) "Initial Funding Schedule" means the first Funding Schedule for the SKA Project;
- b) "Financial Rules" means any rules, processes and procedures that implement the requirements of this Financial Protocol, and are approved by the Council from time to time.

Article 2

Financial Management

The SKAO shall follow the principles of sound financial management, efficiency, transparency and accountability in the planning and management of financial resources.

Article 3

Funding Schedule

1. Each Funding Schedule shall be approved by unanimous vote of the Council.
2. Each Member and Associate Member shall contribute in accordance with the relevant Funding Schedule.
3. An Initial Funding Schedule shall be approved by unanimous vote at the first Council meeting or as soon as appropriate thereafter.
4. Financial contributions made by Members and Associate Members shall be executed in accordance with a method as described in the relevant Funding Schedule.
5. A payment schedule, for the purposes of describing minimum cash contributions as well as terms and conditions for any other payments to be made by Members and Associate Members over a prescribed period, shall be submitted by the Director-General for approval by decision of the Council. Members and Associate Members shall be required to pay minimum cash contributions.
6. Where the financial contributions intended to be made by a Member or Associate Member in terms of the relevant Funding Schedule are not aligned with the payment schedule referred to in paragraph 5 of this Article, a suitable profile of contributions shall be agreed with the Director-General prior to approval of the payment schedule by decision of the Council. The Director-General shall take into consideration these arrangements in subsequent payment schedules.
7. Members and Associate Members may make voluntary contributions in addition to those provided for in the Funding Schedule.

Article 4

Reviews and Amendments of a Funding Schedule

1. The Council may undertake reviews of Funding Schedules for the purposes of amendment, if required, in accordance with the Financial Rules.
2. The Council, by unanimous vote, may amend a Funding Schedule at any time, but must do so before the expiry date of the relevant Funding Schedule.
3. The Council, by unanimous vote, may add new Members and Associate Members to a Funding Schedule, according to such terms as it prescribes.

4. No review or amendment of a Funding Schedule may result in a change in the financial contributions to be made by any Member or Associate Member, unless agreed by that Member or Associate Member.

Article 5

Project Participation

1. Further to Article 10, paragraph 4, of the Convention, rules and regulations concerning the share basis of project participation shall be approved by decision of the Council.

2. The proportion of financial contributions made by Members and Associate Members to operations, which includes the cost for operations, upgrades and decommissioning, shall be equal to the proportion of financial contributions towards construction. Financial contributions that cause the proportional share for construction and operations to be unequal, and the manner in which they are made, shall only be allowed if agreed by decision of the Council.

Article 6

Approval of Budgets

1. A double majority shall be required for the approval of budgets by the Council.

2. A double majority is defined as when the same decision is approved by both a two-thirds majority according to weighted voting and a two-thirds majority according to the number of Members present and voting.

3. Weighted voting is defined to be the use of voting rights by each Member for decision making. A voting right is determined by each Member's current project share, as prescribed in the Funding Schedule.

Article 7

Host Countries

1. Assets and infrastructure made available by a Host Country in accordance with a host agreement entered into between a Host Country and the SKAO, and incorporated into SKA-1 or any subsequent phase of the SKA Project, shall be valued by a methodology agreed to between the Host Country and the SKAO, and approved by decision of the Council.

2. The value of assets and infrastructure made available, and incorporated, under paragraph 1 of this Article, shall be credited by the Council as a financial contribution towards the construction budget of a subsequent phase to SKA-1, unless otherwise agreed with that Host Country.

Article 8

Loans and Liabilities

1. The SKAO may, following Council approval by decision, obtain loans and incur debt, within the limits specified by the Financial Rules. No Member or Associate Member will incur any additional financial obligations to the SKA Observatory, as a result of a decision to obtain a loan or incur debt, without its explicit agreement to incur such a responsibility.

2. The SKAO may establish a fund for future liabilities associated with construction, operation, upgrade and decommissioning of any or all astronomical facilities to be established by the SKAO. Financial liabilities for Members and Associate Members may not exceed the financial commitments as prescribed in the relevant Funding Schedule, unless otherwise agreed by unanimous vote of the Council.

D. PARLEMENT

De Overeenkomst, met Protocolen, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan de Overeenkomst, met Protocolen, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van de Overeenkomst, met Protocollen, zullen ingevolge artikel 19, tweede lid, in werking treden dertig dagen na datum waarop de akten van bekrachtiging, aanvaarding of goedkeuring zijn neergelegd door Australië, de Republiek Zuid-Afrika, het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland en twee andere ondertekenaars.

Uitgegeven de *tweëntwintigste* maart 2019.

De Minister van Buitenlandse Zaken,

S.A. BLOK