

**INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER**



Dolliver Nelson
The President

14 December 2004

Excellency,

I have the honour to acknowledge receipt of your Note of 14 December 2004 in which you confirm the understandings concerning the interpretation of certain provisions of the Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany regarding the Headquarters of the Tribunal which reads as follows:

"I have the honour to refer, on the occasion of the signing of the Agreement between the Federal Republic of Germany and the International Tribunal for the Law of the Sea regarding the Headquarters of the Tribunal (hereinafter referred to as "the Agreement"), to the discussions held between the representatives of the Government of the Federal Republic of Germany and the representatives of the International Tribunal for the Law of the Sea concerning the interpretation of certain provisions of the Agreement and to confirm the following understandings:

1. It is the understanding of the Parties that the regulations to be issued by the Tribunal under article 4, paragraph 2, of the Agreement will be those necessary for the conduct of its operations and activities in the execution of its mandate and to establish conditions necessary for the exercise of its functions and fulfilment of its purposes.

2. It is the understanding of the Parties that officials of the Tribunal whose membership in the German statutory health insurance scheme ended on account of employment with the Tribunal may join the German statutory health insurance scheme by analogous application of article 9, paragraph 1, number 5 of the Social Code, Book V, if they take up employment in the Federal Republic of Germany within two months of their employment with the Tribunal coming to an end. The health insurance fund is to be notified accordingly by the person concerned within three months of such employment being taken up.

Mr Jürgen Chrobog
State Secretary
Foreign Office
Berlin

3. It is the understanding of the Parties that the privileges and exemptions with regard to value added tax/turnover tax (*Umsatzsteuer*) in the Federal Republic of Germany granted to the Members and to the officials of the Tribunal in accordance with article 19, subparagraphs (a) and (b), of the Agreement shall be accorded on the basis of the most favourable treatment under the currently applicable ordinance concerning the reimbursement of value added tax/turnover tax (*Umsatzsteuer*) to permanent diplomatic missions and career consular posts as well as to their non-German members.

It is the understanding of the Parties that the Federal Finance Office shall, on request, reimburse the Tribunal for the amount of value added tax/turnover tax (*Umsatzsteuer*) paid in respect of supplies and services purchased from a taxable person for the official use of the Tribunal provided that the tax due exceeds €25 per invoice in the aggregate and the tax has been separately identified in the invoice. If the reimbursed value added tax/turnover tax (*Umsatzsteuer*) is subsequently reduced as a result of a review of the price originally paid for the supplies and services in question, the Tribunal shall inform the Federal Finance Office of such a reduction in price and shall subsequently return the balance of the tax previously reimbursed.

Likewise the Federal Finance Office shall, on request, also reimburse the Tribunal for the mineral oil tax for petrol, diesel and heating oil included in the price of purchases intended for the official use of the Tribunal provided that the tax exceeds €25 per invoice in the aggregate.

If goods purchased in the European Union or imported from outside the European Union by the Tribunal for its official use, for which the Tribunal was granted exemption from value added tax/turnover tax (*Umsatzsteuer*) or import turnover tax (*Einfuhrumsatzsteuer*), are sold, given away or otherwise disposed of to taxable persons who have the full right of deduction, international organizations entitled to tax exemption, or to other entities entitled to tax exempt status, no value added tax/turnover tax (*Umsatzsteuer*) shall be paid. If goods referred to above are sold, given away or otherwise disposed of to persons and entities other than those referred to above, the part of the value added tax/turnover tax (*Umsatzsteuer*) which corresponds to the sales price or the current market value of such goods, as appropriate, shall be payable to the Federal Finance Office. The amount of the tax due shall be determined on the basis of the tax rate applicable on the actual date of the transaction in question. The goods imported exempt from customs duties shall not be sold or otherwise disposed of in the Federal Republic of Germany except with the consent of the Government and subject to the payment of the applicable customs duties.

4. It is the understanding of the Parties that in well-founded individual cases, the Federal Republic of Germany shall, on request, grant to officials of P-4 level whose functions justify it the same privileges, immunities and facilities as are accorded to officials of P-5 level and above in accordance with article 18, paragraph 1 (b) and article 19, subparagraph (b) of the Agreement. Requests on the matter shall be submitted by the Registrar of the Tribunal to the Federal Foreign Office.

5. It is the understanding of the Parties that the Members shall be exempt from German law on mandatory coverage in the field of Social Security by virtue of their diplomatic status under article 10 of the Statute of the Tribunal as well as article 18 of the Agreement. With regard to Members who are German nationals or have their permanent residence in Germany this shall only apply insofar as the conditions of article 23, subparagraph (a), of the Agreement are fulfilled.

6. With reference to article 19 of the Agreement, it is the understanding of the Parties that:

(a) for the purposes of German taxation law, the tax exemption referred to in article 19, subparagraph (c), shall not be granted for pensions and annuities paid by the Tribunal to former Members or officials of the Tribunal. In this respect, the same treatment shall be granted as is accorded to the United Nations institutions established in the host country. This shall be without prejudice to any Agreement for the avoidance of double taxation between the host country and the country of nationality or residence of the persons referred to;

(b) the Tribunal shall notify the Government of the names and addresses of residence in the host country of the officials of the Tribunal who are not accorded the privileges and exemptions of diplomatic agents;

(c) where the incidence of any form of taxation depends upon residence, periods during which Members or officials of the Tribunal are present in the host country for the discharge of their functions shall not be considered as periods of residence if such Members or officials are accorded diplomatic privileges, immunities and facilities.

7. It is the understanding of the Parties that following retirement from active service with the Tribunal, after a number of years of service in Hamburg, officials of the Tribunal and members of their

families forming part of their households (spouses, unmarried children under the age of 21 and other relatives dependent on them) shall, upon application, be issued with a residence permit, insofar as they are in a position to support themselves, including payment of health insurance and long term care insurance (Kranken- und Pflegeversicherung) contributions, in accordance with applicable German legislation.

8. It is the understanding of the Parties that pursuant to article 25, paragraph 2, of the Agreement:

(a) the Government shall inform the Tribunal of the competent authorities referred to therein;

(b) on presentation of a valid travel document, the persons referred to in article 25, paragraph 2, will receive a visa at the border, if required, and travel to the seat of the Tribunal will be facilitated. The Tribunal will only make use of this procedure in case of urgency or unforeseen circumstances and will provide information on these circumstances.

9. It is the understanding of the Parties that restrictions regarding entry into, sojourn in, or departure from the territory of the host country shall not apply to persons referred to in articles 18 to 22 of the Agreement who enjoy diplomatic immunity or similar legal status. Restrictions regarding entry into, sojourn in, or departure from the territory of the host country may apply to persons referred to in articles 21 and 22 of the Agreement who do not enjoy diplomatic immunity or similar legal status if the person in question has been convicted of or is charged with a serious criminal offence as referred to in the law of the host country relating to aliens. The name of any such person to whom such restrictions are intended to be applied shall be communicated to the Tribunal and such person shall be provided safe conduct at the request of the Tribunal.

10. It is the understanding of the Parties that if the Government enters into any agreement with an international organization containing terms and conditions more favourable than those extended to the Tribunal under the Agreement, either Party may ask for consultations as to whether such terms and conditions could be extended to the Tribunal.

11. This Exchange of Notes is concluded in the English, French and German languages, all language texts being equally authentic.

Should the International Tribunal for the Law of the Sea agree to the understandings contained in paragraphs 1 to 11 above, Your Excellency is requested to confirm the acceptance of these

understandings by the Tribunal. This Exchange of Notes shall form then an integral part of the Agreement in accordance with article 30 thereof.”

I confirm that the understandings set out in your Note correspond to those of the International Tribunal for the Law of the Sea. I agree that this Exchange of Notes shall form an integral part of the Agreement in accordance with article 30 thereof.

Please accept, Excellency, the assurances of my highest consideration.