

**(A) AGREEMENT BETWEEN THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA AND THE GOVERNMENT OF THE FEDERAL
REPUBLIC OF GERMANY ON THE OCCUPANCY AND USE OF THE
PREMISES OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF
THE SEA IN THE FREE AND HANSEATIC CITY OF HAMBURG
(ADDITIONAL AGREEMENT IN ACCORDANCE WITH ARTICLE 3 OF
THE HEADQUARTERS AGREEMENT)**

The International Tribunal for the Law of the Sea

and

the Government of the Federal Republic of Germany

Desiring to conclude an agreement regarding the occupancy and use of the premises of the International Tribunal for the Law of the Sea and in order to regulate the terms under which the premises shall be made available by the Government of the Federal Republic of Germany to the Tribunal as its seat in the Free and Hanseatic City of Hamburg, pursuant to article 1, paragraph 2, of Annex VI to the United Nations Convention on the Law of the Sea of 10 December 1982,

Having regard to the legal personality of the Tribunal and the provisions of the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea, adopted by the Meeting of State Parties to the United Nations Convention on the Law of the Sea on 23 May 1997,

Whereas the Government of the Federal Republic of Germany has agreed to provide, at its own expense, appropriate accommodation for the International Tribunal for the Law of the Sea and to make it available with all necessary facilities as the premises,

Whereas the International Tribunal for the Law of the Sea has accepted the offer of the Government of the Federal Republic of Germany and has agreed to occupy and use the premises,

Whereas the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (hereinafter referred to as "the Headquarters Agreement") *inter alia* provides for the privileges, immunities and facilities of the Tribunal in the Federal Republic of Germany,
Have agreed as follows:

Article 1
Use of terms

For the purposes of this Agreement:

- a) "Tribunal" means the International Tribunal for the Law of the Sea;
- b) "host country" means the Federal Republic of Germany;

- c) "Government" means the Government of the Federal Republic of Germany;
- d) "competent authorities" means such federal (*Bund*), *Land* (state) or local authorities in the Federal Republic of Germany including the "*Oberfinanzdirektion*" as may be appropriate in the context and in accordance with the laws, regulations and customs of the Federal Republic of Germany, including the laws, regulations and customs of the *Land* (state) and local authorities involved;
- e) "*Oberfinanzdirektion*" means the regional finance directorate responsible for the area of the Free and Hanseatic City of Hamburg;
- f) "Parties" means the parties to this Agreement;
- g) "Headquarters Agreement" means the Agreement concluded between the Tribunal and the Government regarding the Headquarters of the Tribunal;
- h) "Headquarters district" comprises the area with the buildings upon it of the premises of the Tribunal as described in Annex 1;
- i) "premises" means the property of the Federal Republic of Germany comprising the buildings, installations, equipment, fittings and all other facilities, as well as the surrounding grounds on the site located on the street "Am Internationalen Seegerichtshof", in the Free and Hanseatic City of Hamburg, as described in Annex 1;
- j) "installations" means all immovable fixtures, such as machinery, utility and communication lines, drainage systems and all other systems and facilities which are permanently attached to the premises;
- k) "fittings" means any item which, though removable, is considered to be a permanent part of the premises, such as specially fitted or built-in furniture, lamps and video screens;
- l) "equipment" means any movable item which is provided as accessory to the premises and which is neither permanently fixed nor specially fitted for the premises, such as telephones, fax machines, furniture, kitchen equipment and table-ware.

Article 2 Purposes and scope of the Agreement

This Agreement establishes the terms and conditions under which the premises together with the installations, equipment, fittings and all other facilities therein which are required for the effective functioning of the Tribunal are made available by the Government to the Tribunal and are occupied and used by the Tribunal.

Article 3
Transfer and use of the premises

(1) The Government hereby agrees to transfer the premises permanently to the Tribunal, free of rent, with the right to occupy and use the premises as the Headquarters of the Tribunal for the purpose of and in accordance with the Headquarters Agreement and this Agreement. Without prejudice to the foregoing, the premises shall remain the property of the Federal Republic of Germany.

(2) The Tribunal shall have the right to enjoy the premises peaceably and quietly, without undue interruptions and disturbances, for the conduct of its activities including any ancillary activities it may decide to carry out.

(3) The Government shall make every effort to ensure that the use of the vicinity of the premises shall not adversely affect the usefulness of the premises to the Tribunal.

(4) The Tribunal may, with due notice to the Government, allow third parties use of the premises or parts of the premises, free of rent, but, if required, against compensation for expenses incurred, for the purpose of meetings, conferences, consultations, deliberations or any other activities related to the functions or interests of the Tribunal. In respect of the obligations of the Tribunal under this Agreement any such activities shall be deemed to be activities of the Tribunal.

(5) The Government undertakes to ensure that the buildings are properly constructed and equipped for occupancy and use for the purposes of the Tribunal and that the buildings, installations and fittings are erected in compliance with the building regulations and standards that are legally binding in the host country.

(6) The Government shall make the premises available to the Tribunal safe, fit and ready for use and occupancy on 6 November 2000. On this date, the Government shall transfer the possession of the premises to the Tribunal. The responsibilities of each of the Parties for the operation, maintenance and repair of the premises under article 4, shall take effect from the date of the transfer of the possession of the premises.

(7) An inventory of the equipment, fittings and any other movable facilities provided with the building to the Tribunal shall be drawn up by the Government at least 30 days prior to the date specified in paragraph 6 and will be confirmed by the Tribunal within 30 days following the move into the premises by the Tribunal.

Article 4
Operation, maintenance, repair and alteration
of the premises

(1) The Tribunal shall maintain the premises in good repair and tenable condition. In this respect, it shall be responsible, at its own expense, for the orderly operation and adequate maintenance of the premises including installations and fittings. Adequate maintenance shall include regular inspection and servicing of installations and fittings as well as upkeep of the buildings and care of the grounds. The Tribunal shall also be responsible for replacement or repair of buildings or parts

of buildings, installations and fittings as a result of faulty operation or inadequate maintenance. In respect of all other repairs of the premises including installations and fittings, particularly those arising from wear and tear, the Tribunal will be responsible for minor repairs. A detailed description of the responsibilities of the Tribunal in respect of operation and maintenance as well as repairs is set out in Annex 2.

(2) The Tribunal undertakes to secure the services of one or more providers of facility management to carry out the operation and maintenance of the premises in accordance with this article. When so requested, the *Oberfinanzdirektion* shall assist the Tribunal in the selection of the providers of facility management services. The Tribunal will notify the Government as to which of the services specified in Annex 2 will be carried out by external operators. All other services will be carried out by the Tribunal.

(3) The host country shall be responsible, at its own expense, for major repairs as specified in Annex 2. This includes in particular measures necessary to preserve the substance of the buildings, installations and fittings thereon (“in Dach und Fach”) and to eliminate possible construction defects in the buildings. In addition, it shall be responsible for any necessary restoration or reconstruction of the premises in accordance with article 7. The Tribunal shall report any necessary measures that are the responsibility of the host country to the Government, which shall take prompt and effective action in response.

(4) The Tribunal may, with notice to the competent authorities, at its own expense, make alterations, attach fittings, add installations and erect additions on the premises for its own purposes. In any case involving structural alterations of the buildings or additions to be erected on the premises, the Tribunal shall obtain the prior consent of the Government and take into account the building regulations applicable in the Free and Hanseatic City of Hamburg to the extent feasible and subject to their applicability in the Headquarters district in accordance with article 4, paragraph 2, of the Headquarters Agreement.

(5) In order to ensure the timely filing of warranty claims which may arise against a construction company or architect involved in the construction and renovation of the buildings, installations and fittings, the Tribunal shall inform the Government as soon as possible of any defects which may possibly give rise to warranty claims.

(6) To the extent to which the host country furnishes the Tribunal with equipment for its use, the Tribunal shall be responsible, at its own expense, for any servicing measure, repair or replacement of such equipment which the Tribunal may consider to be necessary or appropriate according to its own requirements. In respect of such equipment the Government shall secure the transfer of any warranty rights to the Tribunal or shall authorize the Tribunal to secure servicing or repairs of the equipment warranted by the producers or suppliers of such equipment. The Government will make available to the Tribunal all information necessary to file such warranty claims.

(7) Within one year from the date specified in article 3, paragraph 6, the Tribunal will notify the competent authorities of any conditions of the premises that do not

conform to the requirements in article 3, paragraph 5. The Government shall take prompt and effective action to ensure that these requirements are met and that any necessary repairs or replacements are undertaken within a reasonable time.

Article 5 Public services for the premises

At the request of the Registrar of the Tribunal, the Oberfinanzdirektion shall use its good offices to cause the providers of public services to:

- a) install and maintain, on fair conditions, the public services needed by the Tribunal, such as, but not limited to, postal, telephone, telegraph, facsimile and data communication services, electricity, water, gas, sewerage, collection of waste, fire protection and public (local) transportation;
- b) extend to the Tribunal, in respect of utilities and services referred to in subparagraph (a), rates not less favourable than the rates accorded to essential agencies and organs of the Government on the territory of the Free and Hanseatic City of Hamburg.

Article 6 Access to the premises

Without prejudice to article 5 of the Headquarters Agreement, upon request, with due notice given and subject to the prior approval of the Registrar of the Tribunal, duly authorized representatives of the competent authorities may enter the premises in order to inspect the premises for the purposes of maintenance, under conditions which shall not unreasonably disturb the carrying out of the functions of the Tribunal.

Article 7 Damage to or destruction of the premises

(1) Subject to article 4, the Tribunal shall not be responsible for restoration or reconstruction of the premises including buildings, installations and fittings in case of damage or destruction by the elements, fire or other causes.

(2) Should the premises, including buildings, installations and fittings, be damaged by the elements, fire or other causes the Government shall, in case of partial damage to the premises, restore the damaged part of the premises within a reasonable time. In the event that the premises are totally destroyed or otherwise rendered unfit for the use of the Tribunal, the Government shall make other suitable premises available to the Tribunal.

Article 8 Vacation of the premises

In the event that the Tribunal vacates the premises, it shall surrender the premises to the host country in as good a condition as when taken, except for reasonable wear and tear and damage by the elements, fire or other causes. The Tribunal shall not be required to restore the premises to the shape and state existent

prior to any changes or additions that may have been executed in accordance with article 4, paragraph 4. The Tribunal shall not be required to replace or repair any equipment which is not a permanent fixture of the buildings and which will be provided by the host country with the premises.

Article 9 Consultations

(1) Representatives of the Tribunal and representatives of the Government shall meet at the request of either party to resolve by mutual agreement any problems that may have been found to exist with respect to the application of this Agreement in order to find an appropriate solution with a view to securing the effective functioning of the Tribunal.

(2) Three years after the entry into force of this Agreement or upon request of either party, representatives of the Tribunal and representatives of the Government shall meet to review the application of article 4 and Annex 2.

Article 10 Settlement of disputes

Any dispute between the Tribunal and the Government concerning the interpretation or application of this Agreement shall be settled in accordance with article 33 of the Headquarters Agreement.

Article 11 General provisions

(1) This Agreement may be amended by agreement between the Tribunal and the Government, at any time, at the request of either Party.

(2) After being signed by the Parties, this Agreement shall enter into force on the same day as the Headquarters Agreement. It shall be applied provisionally as from the date of signature.

(3) The attached Annexes 1 and 2 are an integral part of this Agreement.

Done at Berlin, on 18 October 2000, in duplicate in the English, French and German languages, all texts being equally authentic.

{Signed}
P. Chandrasekhara Rao
(President of the International Tribunal
for the Law of the Sea)

For the
International Tribunal for the Law

(Signed)
Herta Däubler-Gmelin
(Minister of Justice of the Federal
Republic of Germany)

(Signed)
Wolfgang Ischinger
(State Secretary for Foreign Affairs)
For the
Government of the Federal Republic

of the Sea

of Germany

Annex 1
to the
Agreement
between
the International Tribunal for the Law of the Sea
and
the Government of the Federal Republic of Germany
on
the Occupancy and Use of the Premises of the
International Tribunal for the Law of the Sea
in the Free and Hanseatic City of Hamburg

Description of the premises
in accordance with subparagraph (i) of article 1

The premises made available to the Tribunal for occupancy and use through the Headquarters Agreement and this Agreement shall be described, as provided in subparagraph (i) of article 1, as follows:

Section 1
Owner

The owner of the premises is the Federal Republic of Germany, as entered in the Land Register for Nienstedten.

Section 2
Location

The premises are located on the street "Am Internationalen Seegerichtshof", in the district of Altona, district area of Nienstedten, in the federal state of Hamburg. The premises comprise the plots of land designated in the Land Register for Nienstedten, volume 25, pages 1056 and 2334:

- | | | | |
|-------------------|-----------|------------|------------------------|
| - serial number 3 | plot 1321 | total area | 28,369 m ² |
| - serial number 1 | plot 2448 | total area | 2,721 m ² . |

Section 3
Buildings

All the buildings located on the plots referred to in section 2 form part of the premises. The buildings form a complex comprising the main building together with the security building and a nineteenth-century villa.

Section 4
Additional installations and facilities

The premises also include:

- parking spaces for vehicles near the vehicle entrance;
- boundary of the property, including the entrance gate, forming the border of the premises on the Elbchaussee, on the Elbschloßstraße, on the street “Am Internationalen Seegerichtshof” and on the adjacent site in the west;
- road- and pathways within the premises;
- electronic surveillance of the grounds;
- drainage installation for draining rainwater into the Elbe (the drains run under the Elbchaussee, plots 1406 and 1117; the drainage installation is located on plot 1117).

Annex 2
to the
Agreement
between
the International Tribunal for the Law of the Sea
and
the Government of the Federal Republic of Germany
on
the Occupancy and Use of the Premises of the
International Tribunal for the Law of the Sea
in the Free and Hanseatic City of Hamburg

Distribution of responsibilities in accordance with article 4

Section 1
General provisions

The purpose of this Annex is to lay down in detail the distribution of the respective responsibilities of the Parties in respect of repairs, operation and maintenance as well as upkeep of the premises as provided for in article 4. This Annex is not exhaustive: insofar as responsibilities are not expressly provided for in this Annex, article 4 shall apply.

Section 2
Responsibilities of the host country

The host country shall be responsible, at its own expense, for major repairs as provided in article 4, paragraph 3. This includes in particular measures necessary to preserve the substance of the buildings, installations and fittings thereon (“in Dach und Fach”) and to eliminate possible construction defects in the buildings as well as any necessary restoration or reconstruction of the premises in accordance with article 7.

Any single repair measure exceeding the amount of 2,500 Euro shall be considered to be a major repair. Subject to section 3 (a), the costs of major repairs shall be borne by the host country. The host country, in accordance with the procedure in section 3 (a), shall carry out the necessary repairs or authorize the Tribunal to do so on its behalf and at its expense.

Section 3 Responsibilities of the Tribunal

Pursuant to article 4, paragraphs 1 and 2, the responsibilities of the Tribunal shall include the following:

a) Minor repairs of buildings, installations and fittings

The Tribunal shall be responsible for minor repairs of the premises including installations and fittings as provided in article 4, paragraph 1. For the purpose of determining the responsibilities of the Tribunal for minor repairs and of the host country for major repairs the following shall apply:

- in case of a necessary repair measure in respect of buildings, installations and fittings, the Tribunal shall be responsible for covering the costs up to an amount of 1,000 Euro. In case the cost of such a single repair measure exceeds the amount of 1,000 Euro, the host country shall reimburse the Tribunal for the amount in excess. Such reimbursement of repair costs incurred during a calendar year shall be executed by 30 June of the following calendar year. The total responsibility of the Tribunal in respect of such repairs shall not exceed 50,000 Euro per year. The host country shall reimburse the Tribunal for any costs of such repairs which have been paid by the Tribunal and which exceed the overall cost ceiling of 50,000 Euro in any given calendar year;
- in any case where the cost of a single repair measure is assessed to be in excess of the amount of 2,500 Euro, the Tribunal shall seek the prior approval of the *Oberfinanzdirektion* before any repairs are carried out. In such case, the *Oberfinanzdirektion* shall carry out the necessary repairs or authorize the Tribunal in writing to do so on its behalf and at its expense. No reimbursement by the host country of costs exceeding the amount of 1,000 Euro for a single repair measure to the Tribunal shall be made if the total costs for this measure exceed the amount of 2,500 Euro unless such prior written authorization has been given by the *Oberfinanzdirektion*. In any case where the Tribunal notifies the *Oberfinanzdirektion* that such repair measure is urgent, the *Oberfinanzdirektion* shall take the necessary steps to carry out the repair work or provide an authorization, within one month from the date of notification unless the circumstances require earlier action. The Tribunal may proceed with the repair if no response is provided within that timelimit;
- the cost ceilings of 1,000 Euro, 2,500 Euro and 50,000 Euro do not apply to any repairs or replacements of buildings or parts of buildings, installations and fittings which become necessary as a result of faulty

operation or inadequate maintenance. In such a case, the Tribunal shall be responsible for covering the full costs of replacement or repair.

b) Operation and maintenance of the premises

The Tribunal shall be responsible as provided in article 4, paragraph 1, for the following:

- operation and maintenance, including inspection and servicing, of installations and fittings;
- disposal of sewage and garbage, including hazardous waste;
- utility costs such as electricity, gas or diesel fuel, and water;
- gardening;
- janitorial services;
- cleaning of buildings and grounds including cleaning of pavements adjacent to the premises on the streets “Am Internationalen Seegerichtshof” and “Elbchaussee”;
- security;
- snow and ice removal including cleaning of pavements adjacent to the premises on the streets “Am Internationalen Seegerichtshof” and “Elbchaussee”;
- maintenance of telecommunication equipment.

c) Upkeep of buildings and care of the grounds

The Tribunal shall be responsible for the upkeep of the buildings and care of the grounds as provided in article 4, paragraph 1. This responsibility includes all cosmetic repairs on the inside and outside of the buildings which are necessary to keep the appearance of the buildings in a good and tenantable condition.

(B) EXCHANGE OF LETTERS

I. Letter from the Director General of Legal Affairs, Foreign Office, Berlin, to the Registrar of the International Tribunal for the Law of the Sea

(Courtesy translation)

Berlin, 18 October 2000

Mr. Registrar,

I have the honour, on behalf of the Government of the Federal Republic of Germany, to refer to the Agreement between the Government of the Federal Republic of Germany and the International Tribunal for the Law of the Sea on the Occupancy and Use of the Premises of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg (hereinafter "Additional Agreement"), which was signed today, and to confirm the following understandings:

1. The Government of the Federal Republic of Germany and the International Tribunal for the Law of the Sea have agreed to sign the Additional Agreement, in order to enable the Tribunal to move into the new premises, although negotiations with regard to 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 "Headquarters Agreement") have not been concluded.
2. With regard to references in the Additional Agreement to provisions of the Headquarters Agreement, the parties have agreed that these references are to the draft Headquarters Agreement which is under negotiation between them (relevant excerpts of the draft Headquarters Agreement are annexed herewith and the passage of the text set out in the excerpts is not to be treated as definitive for the purposes of the Headquarters Agreement).
3. Upon signature of the Headquarters Agreement, corrections, if any, made in the citations of specific articles of the Headquarters Agreement and deletion of square brackets around such articles in the Additional Agreement shall not constitute formal amendments to the Additional Agreement and would not, therefore, attract the procedure for amendment under article 11, paragraph 1, of the Additional Agreement. Such corrections, if any, and deletions shall be made on the basis of an exchange of letters between the parties immediately following signature of the Headquarters Agreement.
4. The duty of the Tribunal under article 4, paragraph 1, of the Additional Agreement to maintain the premises "in good repair and tenantable condition" shall be interpreted to include the Tribunal's responsibility to keep the premises in a safe condition. This corresponds to the Government's responsibility under article 3, paragraph 6, to make the premises available to the Tribunal safe, fit and ready for use and occupancy. With respect to articles 7 and 8 of the Additional Agreement, the term "other causes" contained in the expression "the elements, fire or other causes" shall mean other similar causes such as *force majeure*.

5. The temporary premises of the Tribunal, located at Wexstrasse 4, Hamburg, shall be available to the Tribunal for a period of 30 days after the date of occupation of the new premises by the Tribunal. The transfer of possession of the new premises to the Tribunal will take place, as agreed between the parties, on 6 November 2000.

Please accept, Mr. Registrar, the assurance of my highest consideration.

(Signed)
G. Westdickenberg

II. Letter from the Registrar of the International Tribunal for the Law of the Sea to the Director General of Legal Affairs, Foreign Office, Berlin

18 October 2000

Mr. Director General,

I have the honour to acknowledge receipt of your letter of 18 October 2000 in which you confirm, on behalf of the Government of the Federal Republic of Germany, the understandings concerning the Agreement between the International Tribunal for the Law of the Sea and the Government of the Federal Republic of Germany on the Occupancy and Use of the Premises of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg (hereinafter "Additional Agreement") which reads as follows:

[See letter I]

I confirm that the understandings set out in your letter correspond to those of the International Tribunal for the Law of the Sea.

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

(Signed)
Gritakumar E. Chitty
Registrar