

ANNEX 5

HEADQUARTERS AGREEMENT

SOUTH-EAST ATLANTIC FISHERIES ORGANISATION

Basic texts

**HEADQUARTERS AGREEMENT BETWEEN
THE SOUTH EAST ATLANTIC FISHERIES ORGANISATION**
herein after called the "Organisation"
AND
THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA
herein after called the "Government"
Hereinafter jointly called the "Parties"

HAVING regard to Article 5 of the Convention on the Conservation and the Management of Living Marine Resources in the South East Atlantic Ocean which provides that the headquarters of the Organisation shall be established at Swakopmund, Namibia;

DESIRING to define the legal capacity, privileges and immunities of the Organisation and the privileges and immunities to be enjoyed by the staff of the Organisation in Namibia;

WISHING to provide for the privileges and immunities of certain other designated persons in the interests of facilitating the performance of the Organisation's functions under the Convention on the Conservation and Management of Living Marine Resources in the South East Atlantic Ocean;

WHEREAS the Organisation obtained full legal personality in Article 5 of the Convention,

Therefore the Parties agreed:

1. DEFINITIONS

For the purpose of this Agreement unless expressly indicated otherwise:

"Appropriate Authorities" means the national, regional or local authorities as the context may require, in accordance with the laws of the Republic of Namibia;

“Commission” means the Commission of the Convention on the Conservation and Management of Living Marine Resources in the South East Atlantic Ocean, and includes members of, where the context so requires, the Compliance Committee, the Scientific Committee, the Secretariat, and any subsidiary bodies the Commission shall establish from time to time to assist in meeting the Organisation’s objectives;

“Children” shall include biological children, stepchildren and legally adopted children under the age 18 years or above such age but dependent on the Representative, Expert or Staff Member of the Organisation;

“Convention” means the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean;

“Executive Secretary” means the Executive Secretary appointed under Article 10 of the Convention;

“Expert” means a person seconded by a Member State or non Member State performing short term or temporary projects or missions on behalf of the Commission and include a person serving on the Compliance Committee, or the Scientific Committee, or the Secretariat or any subsidiary body that the Commission shall establish from time to time in meeting the Organisation’s objective, without necessarily receiving remuneration from the Commission or any of the bodies referred to above, but does not include staff members, or consultants;

“The Government” shall mean the Government of the Republic of Namibia;

“Headquarters” means the premises of the Commission including the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, occupied by the Commission for the performance of its Official Activities;

“Official Activities” means all activities, including administrative and other activities, undertaken by the Commission pursuant to the Convention in the furtherance of its objectives;

“Offence” means an offence committed under any law of the Republic of Namibia;

“Representative” means duly authorised agents of Parties, in attendance of conferences or meetings convened by the Commission in Namibia, including delegates, alternates, advisers, technical experts and secretaries of delegations;

“Staff Member” means all persons appointed or recruited for full-time employment with the Commission including the Executive Secretary, but does not include experts or persons recruited locally and assigned on hourly rates of pay.

2. INTERPRETATION

This Agreement shall be interpreted in the light of its primary objective, as set out in the Convention, of enabling the Commission to perform its functions in the Republic of Namibia.

3. LEGAL PERSONALITY

The Commission shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable property and to institute and be part to legal proceedings.

4. PREMISES

- 4.1 The Government shall provide the necessary premises for the exclusive use of the Commission, at a nominal rent to be agreed upon by the Commission, which premises shall serve as the Headquarters of the Organisation.
- 4.2 The Headquarters and archives of the Organisation shall be inviolable and shall be under the full authority of the Commission.
- 4.3 The residence of the Executive Secretary of the Organisation shall enjoy the same inviolability and protection as the Headquarters, when necessary.
- 4.4 The Government shall take all appropriate steps to protect the Headquarters against any intrusion or damage and to prevent any impairment of its dignity.
- 4.5 The Government shall arrange for the Headquarters to be supplied by the Appropriate Authorities with basic services, on terms no less favourable than those enjoyed by the Government;
- 4.6 The Commission shall inform the Government of its need for changes to location or extent of its permanent premises and of any temporary occupation of premises for the performance of its Official Activities.
- 4.7 The consent of the Executive Secretary shall be required for access to the Headquarters and shall be given under the conditions laid down by him or her. The Commission and the Appropriate Authorities shall agree under what circumstances and in what manner such consent shall be deemed to have been given.
- 4.8 The Organisation shall be responsible for the supply and maintenance of necessary office equipment.

5. IMMUNITIES OF THE COMMISSION

- 5.1 Except as otherwise provided in the Convention or in this Agreement, the activities of the Commission in Namibia shall be subject to the laws of the Republic of Namibia. In this regard, the Organisation shall cooperate at all times with the appropriate Namibian Authorities in order to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement. The right of the Government to take all precautionary measures in the interests of security shall not be prejudiced by any provision in the Agreement.
- 5.2 Privileges and immunities are accorded to Staff Members and Experts to ensure the independence of the persons to whom they are accorded in the exercise of their functions to achieve the objectives of the Convention.
- 5.3 Within the scope of Official Activities the Commission and its property, premises and assets shall have immunity from suit and other legal process except:
- 5.3.1 to the extent that the Commission expressly waives such immunity from such suit and other legal process in a particular case;
- 5.3.2 in respect of any contract for the supply of goods or services and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any other financial obligation
- 5.3.3 in respect of a motor vehicle offence, involving a motor vehicle belonging to or operated on behalf of the Commission.
- 5.3.4 in the event of attachment, pursuant to the final order of a court of law, for the salaries, wages or other recognised emoluments owed by the Commission to a Staff Member of the Commission or to an Expert.
- 5.3.5 in respect of a counter-claim directly connected with proceedings initiated by the Commission; and
- 5.3.6 in respect of the enforcement of an arbitration award made under Article 21 of the Convention.
- 5.4 The Commission's property, premises and assets, wherever situated, shall have immunity from:
- 5.4.1 any form of restrictions or controls such as a requisition, confiscation, expropriation or attachment;
- 5.4.2 any form of administrative or judicial constraint provided that motor vehicles belonging to or operated on behalf of the Commission shall not be immune from administrative or judicial constraint when temporarily necessary in connection with the prevention of, and investigation into, accidents involving such motor vehicles.
- 5.5 The above immunities shall cease to apply in relation to property, premises and assets, which have been abandoned by the Commission for a period in excess of twelve months.

6. FLAG AND EMBLEM

The Commission shall be entitled to display its flag and emblem on the premises and means of transport of the Commission and of the Executive Secretary.

7. EXEMPTION FROM TAXES

- 7.1 Within the scope of Official Activities, the Commission, its property, premises, movable assets and income, including contributions made to the Commission under and derived from the Convention, shall be exempted from all taxes and levies.
- 7.2 Goods imported by the Commission, including publications, motor vehicles and items for official activities shall be admitted without customs duties, import duties, taxes or fiscal charges having equivalent effect.
- 7.3 Goods and services acquired locally for official use by the Commission shall be exempted from all taxes and levies.
- 7.4 Any such goods, movable or immovable, referred to above in 7.1 and 7.2 shall be subject to national legislation upon their subsequent sale or alienation in Namibia.

8. EXEMPTION FROM CUSTOMS CONTROL RESTRICTIONS

- 8.1 Goods imported or exported for Official Activities of the Commission shall be exempt from prohibitions and restrictions applicable to such goods on ground of national origin.
- 8.2 However, such goods shall not be capable of further alienation or resale in Namibia without the express consent of the relevant authorities.

9. EXEMPTION FROM CURRENCY AND EXCHANGE CONTROL

- 9.1 The Commission shall be exempt from currency and exchange restrictions, including those in respect of funds, currency and securities received, acquired, held or disposed of.

Representative acts does not waive the immunity of the Representative, it shall make the strongest efforts to achieve an equitable solution of the matter in consultation with the Commission.

- 13.5 The Government shall treat Representatives with due respect and shall take all necessary measures to prevent encroachment on their person, freedom and dignity. Where it appears that an offence may have been committed against a Representative, the Commission and such Representative shall be entitled to expect that such steps shall be taken in accordance with the Namibian legal processes to investigate the matter and to ensure that appropriate action is taken with respect to the prosecution of the alleged offender.

14. STAFF MEMBERS

- 14.1 Staff Members of the Secretariat unless they are Namibian citizens or permanent residents in Namibia shall:

14.1.1 be exempt from the application of laws relating to the registration of aliens and immigration, work and or residence permit requirements the spouse and dependent children under the age of eighteen of a Staff Member shall enjoy the same exemptions;

14.1.2 be accorded the same exemption from currency and exchange restrictions as is accorded to an official of comparable rank forming part of a diplomatic mission in Namibia;

14.1.3 be exempt from customs or import duties, taxes and other fiscal charges having equivalent effect, in respect of the import of personal and household effects, including one motor vehicle provided that such goods shall be imported within six months of the Staff Member's first entry into Namibia. Personal and household effects and one motor vehicle may be replaced by duty free imports at such intervals as may be agreed upon by the Commission and the Government.

14.1.4 have similar repatriation facilities, including such facilities in respect of a spouse and children in time of international crisis as are accorded to an envoy;

- 14.2 Save for exceptional circumstances condoned by the Government, goods which have been acquired or imported by Staff Members and to which exemptions under this sub-clause 14.1.3 apply, shall not be given away, sold, lent, hired out, or otherwise disposed of or alienated except under conditions agreed in advance with the Government.

- 14.3 Furniture and personal effects including motor vehicles may be exported free of duties when leaving Namibia on the termination of the official functions of the Staff Member.

- 14.4 Staff members of the Secretariat shall:

14.4.1 have, even after the termination of their service with the Commission, immunity from suit or other legal process in respect of acts and things done by them in the exercise of their official functions, including words written or spoken,

excluding motor vehicle offences committed by such Staff Member and civil or administrative proceedings arising out of death, damage or person injury caused by a motor vehicle belonging to or driven by him;

14.4.2 unless they are Namibian citizens or permanent residents in Namibia, be exempted from all taxes in respect of in respect of salaries, and allowances paid to them by the Commission, notwithstanding anything contained in any rule, policy or regulations of the Commission.

- 14.5 In case the Executive Secretary is a Namibian national, the Government will provide him/her with appropriate travel document befitting the status of senior international civil servant to facilitate the functions during official trips.

15. EXPERTS

Experts shall, unless they are Namibian citizens or permanently resident in Namibia, enjoy the following privileges and immunities to the extent necessary for the carrying out of their functions:

- 15.1 Immunity from suit and other legal process in respect of acts done in exercise of their official functions, including words written or spoken, excluding a motor vehicle offence committed by an Expert, or administrative proceedings arising out of death damage or personal injury caused by an act or omission in Namibia by an Expert. Such immunity shall cease after the Expert's function in relation to the Commission have ceased.
- 15.2 Inviolability for all their official papers and documents;
- 15.3 The same exemption from currency and exchange restrictions as are accorded to a representative of a foreign government on a temporary mission in Namibia on behalf of that government.
- 15.4 Immunity from personal arrest and detention and from confiscation of personal; luggage except when found committing, or attempting to commit, an offence.
- 15.5 Exemption from customs and excise duties and taxes and levies in accordance with what is afforded to Staff Members in Section 15 hereof.

16. VISAS

- 16.1 All persons having official business with the Commission, and particularly:
- 16.1.1 Representatives of Parties and their spouses,
- 16.1.2 Staff Members of the Commission, their spouses and dependent relatives,
- 16.1.3 Experts and consultants on missions for the Commission
- shall have the right of entry into and exit from Namibia.

- 16.2 The Government shall, upon reasonable prior notification, facilitate entry into Namibian territory, sojourn on this territory and exit therefrom of all persons mentioned in clause 16.1. Visas, where required, shall be granted without wait or delay, and without fee, on production of a certificate that the applicant is a person described in the preceding paragraph.

17. WAIVING OF PRIVILEGES AND IMMUNITIES

- 17.1 The Executive Secretary has the right and duty in consultations with the Members of the Commission to waive any immunities, other than his own, and that of his spouse and dependent children under the age of eighteen years, when he or she considers such immunities to impede the course of justice, on condition that it can be waived without prejudicing the purposes for which it was accorded.
- 17.2 The immunities of the Executive Secretary and that of his spouse and dependent children under the age of eighteen years may be waived only by the Commission, in similar circumstances elucidated above.

18. NOTIFICATION OF APPOINTMENTS

- 18.1 The Commission shall inform the Government when a Staff Member or Expert takes upon or relinquishes a post, where possible, prior to arrival and final departure, also in respect of an accompanying spouse and or dependent children under the age of eighteen years.
- 18.2 The Commission shall during the months of January and July and on such other occasion when necessary such as when changes occur, send to the Government a list of all Staff Members, their spouses and dependent children under the age of eighteen years accompanying them in Namibia, and Experts, clearly indicating the Namibian citizens or permanent residents.
- 18.3 The Government shall issue to all Staff Members and Experts after notification of their appointment, an identity card identifying him or her as a Staff Member or Expert as the case may be. This card shall be *prima facie* evidence to the Appropriate Authorities. The Commission shall return the card to the Government when the Staff Member or Expert relinquishes his or her duties. The issue and return of such identity cards shall also apply to the spouse and dependent children of Staff Members.

- 9.2 The Commission may also operate bank and other accounts for its official use in any currency and have them transferred within Namibia or to any other country.

10. COMMUNICATIONS

- 10.1 The Commission shall enjoy treatment not less favourable than that generally accorded to equivalent inter-governmental organisations on official communications and transferral of documents, in terms of rates and taxes on mail and other forms of telecommunications.
- 10.2 The Commission may employ all appropriate means of communication including messages in code or cypher.
- 10.3 The Commission may install and use a radio transmitter with the consent of the Government, and the Government shall assist in the allocation of a suitable broadcasting frequency.
- 10.4 Official communications of the Commission shall be free from censorship and other restrictions.

11. PUBLICATIONS AND INFORMATION

- 11.1 Publications and other information material imported or exported within the scope of Official Activities shall not be restricted in any way.
- 11.2 Intellectual property rights in all information collected, derived from, and published by the Commission shall exclusively vest with the Organisation.

12. COOPERATION

- 12.1 The Commission shall cooperate fully with the Appropriate Authorities to prevent any abuse of the privileges, immunities and facilities provided for in this Agreement.
- 12.2 The Government reserves its inalienable and sovereign right to take reasonable measures to preserve security and nothing in this Agreement prevents the application of legislation necessary for health, quarantine or keeping of public order.

13. REPRESENTATIVES IN ATTENDANCE OF CONFERENCES CONVENED BY THE COMMISSION

- 13.1 Representatives, unless they are citizens of, or permanently resident in, Namibia shall enjoy, the following privileges and immunities:
- 13.1.1 immunity from arrest and detention and from confiscation of personal luggage except when found committing or attempting to commit, an offence;
 - 13.1.2 inviolability for place of residence during the course of their functions;
 - 13.1.3 immunity, which shall extend beyond the termination of their mission, from suit and other legal process in respect of acts and things done by them in the exercise of their official functions, including words written or spoken, excluding civil or administrative proceedings arising out of death, damage or personal injury caused by an act or omission in Namibia;
 - 13.1.4 inviolability for all their official papers and documents;
 - 13.1.5 exemption including exemption of the spouse of the representative from the application of laws relating to the registration of aliens, residence and or work permits;
 - 13.1.6 the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign government on a temporary mission in Namibia on behalf of that government;
 - 13.1.7 the same exemptions in relation to inspection and confiscation of personal baggage, than is that accorded to government envoys;
 - 13.1.8 the right to use codes and to send and receive correspondence and other papers and document by couriers or in sealed bags;
 - 13.1.9 the same exemption from taxes on income that is accorded envoys; and
 - 13.1.10 similar repatriation facilities, including the spouse and dependent relatives, in time of international crisis as are accorded to government envoys.
- 13.2 The provision of Article 13.1.10 shall be applicable irrespective of the relations existing between the governments, which the persons referred, to represent and is without prejudice to any immunities to which such persons may be entitled.
- 13.3 In order to assist the Government to implement the provisions of Article 13, the Commission shall, so far as possible, inform the Government of the names of representatives prior to their arrival in Namibia.
- 13.4 Privileges and immunities are accorded to Representatives of Parties and not for the personal benefit of individuals themselves, in order to safeguard the independent exercise of functions of the Commission. Notwithstanding, a Party not only has the right but is under a duty to waive the immunity of its Representative in any case where in the opinion of the Party the immunity would impede the course of justice, and it may be waived without prejudice to the purpose for which the immunity is accorded. If the Party for whom the

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19. CONSULTATIONS

The Government and the Commission shall consult at the request of either of them concerning matters arising under this Agreement.

20. AMENDMENTS

No variation, alteration or amendment of this Agreement shall be of any force and effect unless reduced to writing and signed by all Parties.

21. SETTLEMENT OF DISPUTES

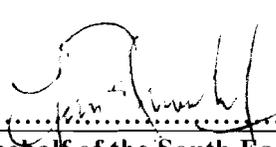
Any dispute between the Government and the Commission concerning the interpretation or application of this Agreement or any question affecting the relations between the Government and the Commission which is not settled by consultation or negotiation or by some other mutually acceptable method shall be referred to an arbitral tribunal constituted *mutatis mutandis* as provided for in Annex 3 of the Convention.

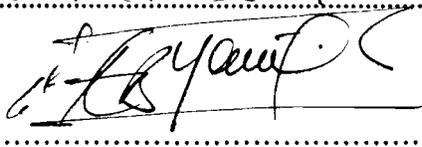
22. ENTRY INTO FORCE AND TERMINATION

- 22.1 This Agreement shall enter into force upon notification by the Parties that their respective internal requirements have been complied with.
- 22.2 This Agreement may be terminated by a joint decision of the Government and the Commission. In the event of the Headquarters of the Commission being moved from Namibia, this Agreement shall, after the period reasonably required for such transfer and the disposal of the property of the Commission in Namibia, cease to be in force. In either event, the date on which the Agreement terminates shall be confirmed by an exchange of notes between the Government and the Commission.

DATED ON THIS ^{24th} DAY OF September 2009

SIGNED:


By and on behalf of the South East
Atlantic Fisheries Organisation


By and on behalf of the Government of
Namibia