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Resolution A.908(22)

**Adopted on 22 November 2001
(Agenda item 18)**

**AGREEMENT WITH THE HOST STATE REGARDING THE EXTENSION OF
PRIVILEGES AND IMMUNITIES TO PERMANENT REPRESENTATIVES
AND DIVISIONAL DIRECTORS**

THE ASSEMBLY,

RECALLING resolution A.10 (I) of 16 January 1959 by which the Assembly accepted the standard clauses of the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947, as modified by Annex XII applicable to the Organization,

NOTING that the Council adopted a revised text of Annex XII by resolution C.37 (XX) on 16 May 1968,

RECALLING resolution A.505 (XII) of 20 November 1981 by which the Assembly approved the terms of an Exchange of Notes between the Government of the United Kingdom and the Organization to amend the Agreement between the International Maritime Organization (previously known as the Inter-Governmental Maritime Consultative Organization) and the Government of the United Kingdom of Great Britain and Northern Ireland regarding the Headquarters of the Organization (later amended^{*}, and referred to hereinafter as "the Headquarters Agreement") to make provision for the right of Member Governments to establish permanent missions, and to determine the status, immunities, privileges and facilities to be accorded to such permanent missions and their personnel, and also approved the Procedure of Accreditation to IMO of Permanent Representatives and Members of the Permanent Missions of Member Governments,

RECALLING ALSO the decision taken at its fourteenth session in November 1985 to establish an intersessional Working Group (subsequently called the Assembly Working Group on Privileges and Immunities, and hereinafter referred to as "the Working Group") with the mandate, *inter alia*, to "study all aspects of the Organization's status, immunities, privileges and exemptions in the light of the changes in the Organization since the Headquarters Agreement was concluded",

* Note: The Headquarters Agreement originally entered into force on 28 November 1968. It was amended by Exchange of Notes of 28 October/1 November 1971, 13/25 February 1974 and 20 January 1982 (See Assembly Resolution A.505(XII)).

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NOTING that the Council has reported to the Assembly at successive sessions on the results of the endeavours of the Working Group and of the negotiations with the Government of the United Kingdom, and that at its twenty-first session in November 1999 the Assembly decided, *inter alia*, that the matter should remain on the agenda of the Council and the Assembly pending an amicable resolution of the issue,

NOTING FURTHER that, during 2000, on the recommendation of the Working Group, the Council had accepted an offer of settlement of the matter by the Government of the United Kingdom,

HAVING CONSIDERED the draft Exchange of Notes providing for amendments to the Headquarters Agreement, as well as draft amendments to Annex XII and the Procedure for Accreditation, which were approved by the Council at its eighty-sixth session in June 2001,

1. NOTES that the Secretary of State for Foreign and Commonwealth Affairs in his letter dated 8 September 2000 on behalf of the Government of the United Kingdom has agreed to the extension of full privileges and immunities to Permanent Representatives to IMO and five IMO posts at Divisional Director level;
2. ACCEPTS the extension of full privileges and immunities to:
 - (a) the Permanent Representatives; and
 - (b) five IMO posts at Divisional Director level, i.e. the Directors of the Administrative Division, the Technical Co-operation Division, the Legal Affairs and External Relations Division, the Conference Division and the Marine Environment Division which, if re-titled, will continue to be entitled to full privileges and immunities;
3. APPROVES
 - (a) the revised text of Annex XII to the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations, as set forth in Annex 1;
 - (b) the draft Exchange of Notes to amend the Headquarters Agreement, as set forth in Annex 2; (hereinafter referred to as “the Agreement”); and
 - (c) the revised Procedure for the Accreditation to IMO of Permanent Representatives and Members of the Permanent Missions of Member Governments, as set forth in Annex 3;
4. NOTES that procedures have been agreed between the Secretary-General and the Secretary of State for Foreign and Commonwealth Affairs relative to problems arising in respect of alleged abuse of privileges and immunities by IMO officials and that finality has been reached in respect of the Agreement referred to in paragraph 3(b) of this resolution;
5. FURTHER NOTES that the Agreement shall enter into force on the date on which the United Kingdom legislation giving effect to the amendment comes into force;

6. REQUESTS the Secretary-General to transmit the revised text of Annex XII to the Convention on the Privileges and Immunities of the Specialised Agencies to the Secretary-General of the United Nations in conformity with Section 38 of Article X of the aforementioned Convention;
7. REQUESTS the Secretary-General to communicate to the Member States of the Organization the date of entry into force of the Agreement;
8. EXPRESSES its appreciation and thanks to the Government of the United Kingdom and to the Chairmen and members of the Assembly Working Group for the co-operative spirit in which they undertook the negotiations on this important matter and brought it to a successful conclusion, and to the Secretary-General for the able assistance given to Governments, the Assembly and the Council.

ANNEX 1

REVISED TEXT OF ANNEX XII TO THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES

Annex XII

1. The privileges and immunities, exemptions and facilities referred to in article VI, section 21 of the standard clauses shall be accorded to the Secretary-General of the Organization, to the Deputy Secretary-General to the Secretary of the Maritime Safety Committee and to the Directors of the Administrative Division, the Technical Co-operation Division, the Legal Affairs and External Relations Division, the Conference Division and the Marine Environment Division, provided that the provisions of this paragraph shall not require the Member in whose territory the Organization has its Headquarters to apply article VI, section 21 of the standard clauses to any person who is its national. If the Organization changes the titles of any of the Director posts at any time, the holders for the time being of such posts shall continue to be accorded the privileges and immunities, exemptions and facilities referred to in this paragraph.
2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including time spent on journeys in connection with service on such committees or missions:
 - (i) immunity from personal arrest or seizure of their personal baggage;
 - (ii) in respect to words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of or employed on missions for the Organization;
 - (iii) the same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;
 - (iv) inviolability for all papers and documents relating to the work on which they are engaged for the Organization; and
 - (v) the right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags for their communications with the International Maritime Organization.

In connection with section 2(a)(iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

- (b) Privileges and immunities are granted to such experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

ANNEX 2

DRAFT EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE INTERNATIONAL MARITIME ORGANIZATION FURTHER AMENDING THE AGREEMENT REGARDING THE HEADQUARTERS OF THE ORGANIZATION SIGNED AT LONDON ON 28 NOVEMBER 1968 (AS AMENDED)

*The Secretary of State for Foreign and Commonwealth Affairs to
the Secretary-General of the International Maritime Organization*

*Foreign and Commonwealth Office
London SW1*

[Date]

Sir,

I have the honour to refer to the Agreement between the International Maritime Organization (previously known as the Inter-Governmental Maritime Consultative Organization) and the Government of the United Kingdom of Great Britain and Northern Ireland regarding the Headquarters of the Organization, signed at London on 28 November 1968 (as amended), (hereinafter referred to as "the Headquarters Agreement") and to correspondence between ourselves regarding the extension of privileges and immunities.

I now have the honour to propose the following amendments to the Headquarters Agreement:

- (1) Replace the words "citizens of the United Kingdom and Colonies" with the words "British citizens, British Dependent Territories citizens, British Overseas citizens, or British Nationals (Overseas)" in the following paragraphs:
 - (a) Article 10(1) (first paragraph), 10 (2) and 10(3);
 - (b) Article 11(1);
 - (c) Article 12(1), (2), (3); and
 - (d) Article 13(4).
- (2) Replace the words "citizen of the United Kingdom and Colonies" with the words "British citizen, British Dependent Territories citizen, British Overseas citizen, or British National (Overseas)" in Article 10 (1) (second paragraph), in Article 13 bis (5) and in Article 15.
- (3) In Article 9(3), insert, "or the Directors of the Administrative Division, the Technical Co-operation Division, the Legal Affairs and External Relations Division, the Conference Division and the Marine Environment Division" after the words, "the Secretary of the Maritime Safety Committee". At the end of Article 9(3), add the words: "If the Organization changes the titles of any of the aforementioned Director posts at any time, this paragraph shall continue to apply to the holders for the time being of such posts."

- (4) In the first and second sentences of Article 10(1), delete the word “and” after “Deputy Secretary-General” and insert, “and the Directors of the Administrative Division, the Technical Co-operation Division, the Legal Affairs and External Relations Division, the Conference Division and the Marine Environment Division” after the words, “the Secretary of the Maritime Safety Committee”. At the end of Article 10 (1), add the words: “If the Organization changes the titles of any of the aforementioned Director posts at any time, this paragraph shall continue to apply to the holders for the time being of such posts.”
- (5) In Article 12 (1), delete the word “and” after “Deputy Secretary-General”, and insert “and the Directors of the Administrative Division, the Technical Co-operation Division, the Legal Affairs and External Relations Division, the Conference Division and the Marine Environment Division” after the words, “the Secretary of the Maritime Safety Committee”. At the end of Article 12 (1), add the words: “If the Organization changes the titles of any of the aforementioned Director posts at any time, this paragraph shall continue to apply to the holders for the time being of such posts.”
- (6) In Article 13 bis (1), insert the words, “or acting Permanent Representative” after the words, “as its Permanent Representative”.
- (7) Insert a new paragraph after Article 13 bis (2) as follows:

“(2A) In addition to the immunities and privileges specified in paragraphs (1) and (2) of this article, the Permanent Representative and acting Permanent Representative shall enjoy, in respect of themselves and members of their families forming part of their households, for the term of their business with the Organization, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.”
- (8) In Article 13 bis (4), insert the words “or an acting Permanent Representative” after the words, “a Permanent Representative”.
- (9) In the second sentence of Article 13 bis (5), replace the words “Paragraph (2)” with the words, “Paragraphs (2) and (2A)” and replace the words “paragraph (1)” with the words, “paragraphs (1) and (2A)”.

If the foregoing proposals are acceptable to the International Maritime Organization, I have the honour to propose that this Note, together with your reply in that sense, shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the International Maritime Organization which shall enter into force on the date on which the United Kingdom legislation giving effect to the amendment comes into force.

(for the Secretary of State)

*The Secretary-General of the International Maritime Organization to the
Secretary of State for Foreign and Commonwealth Affairs*

London

[Date]

I have the honour to refer to your Note of [date] which reads as follows:
[As in Note FCO – Secretary-General]

I have the honour to inform you that the foregoing proposal is acceptable to the International Maritime Organization, which therefore agrees that the Note and the present reply shall constitute an Agreement between the Organization and your Government which shall enter into force on the date on which the United Kingdom legislation giving effect to the amendments comes into force.

I have the honour to convey to you the assurances of my highest consideration.

W.A. O'NEIL
Secretary-General
International Maritime Organization

ANNEX 3

REVISED PROCEDURE FOR THE ACCREDITATION TO IMO OF PERMANENT REPRESENTATIVES AND MEMBERS OF THE PERMANENT MISSIONS OF MEMBER GOVERNMENTS

1. For the accreditation of a Permanent Representative to IMO the Member Government concerned shall make known in writing to the Secretary-General the name and rank of the person designated for that purpose.
2.
 - (a) Where a Member Government wishes to accredit as Permanent Representative a person who is not already or will not be accredited to the Government of the United Kingdom, it shall inform the Secretary-General of the name and rank of such person before accreditation. The Secretary-General shall also be informed if the person nominated is a British citizen, British Dependent Territories citizen, British Overseas citizen, or British National (Overseas) or permanently resident in the United Kingdom.
 - (b) The Secretary-General shall inform the Government of the United Kingdom of the nomination and the Government may express its views thereon to the Secretary-General.
 - (c) Where the Government of the United Kingdom raises an objection to a person so nominated, consultations shall take place between the Secretary-General and the Government of the United Kingdom.
3. The credentials of a Permanent Representative must be issued either by the Head of State or the Head of Government or the Minister for Foreign Affairs and be addressed to the Secretary-General.
4. As soon as a Permanent Representative assumes functions, the Permanent Mission or diplomatic mission of the Member Government concerned will consult the Office of the Secretary-General in order to make the necessary arrangements for the presentation of credentials of the Permanent Representative to the Secretary-General. The Secretary-General will inform the Government of the United Kingdom of the presentation of credentials as soon as possible after such presentation.
5. For the accreditation of other members of the Permanent Mission, it is sufficient to address a letter to the Secretary-General signed by the Permanent Representative, referring to the instructions received from the Government to this effect. In the case of persons who are not or will not be accredited to the Government of the United Kingdom and persons who are British citizens, British Dependent Territories citizens, British Overseas citizens, or British Nationals (Overseas) or permanently resident in the United Kingdom, the procedure described in paragraph 2 above shall be followed.
6. This Procedure shall also apply for the accreditation of a person designated as an acting Permanent Representative pending the appointment of, or during the absence or incapacity of, a Permanent Representative. An acting Permanent Representative shall, during the period of his or her appointment, be deemed to be a Permanent Representative in all respects for the purpose of Article 13 bis of the Headquarters Agreement and this Procedure.