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## DRAFT HEADQUARTERS AGREEMENT

Prepared by: IOTC Secretariat

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### *Background: The Consideration Of The IOTC Headquarters Agreement At The Second Session*

For convenience, we have set out here an extract from the Second IOTC session at which the text of the existing Agreement was authorized.

*13. The Commission agreed in principle to the draft Headquarters Agreement as reflected in Appendix G. Two delegations indicated the need for a short time to be allowed for them to confirm their full agreement to the draft text. As a result, the Commission agreed that any comments on the draft text must reach FAO by 15 October 1997 at the latest. If no additional changes to the Headquarters Agreement were proposed by that date, the current text will be deemed to be approved and Members of the Commission will be informed accordingly. If additional changes were required as a result of the comments from Members, FAO will circulate by facsimile, by 1 November 1997 at the latest, a revised draft to Members of the Commission for urgent final approval. The Commission agreed that no response to such communication from FAO by 15 November 1997 will be deemed as approval of the revised version of the Headquarters Agreement.*

*14. The Commission agreed to invite the Director-General to sign, on its behalf, the Agreement with the Government of Seychelles once it has been finalized.*

Although signed by “FAO”, with the Director-General’s signature, and although the Agreement is described in places as between FAO and the Government of the Seychelles, FAO was in fact signing on behalf of IOTC. This is specifically stated in the preambular part of the Agreement. Furthermore, the minutes of the IOTC quoted above confirm that only the Commission had the authority to approve the Agreement.

### *Is A New Headquarters Agreement Needed?*

A decision needs to be made whether to terminate the present agreement and re-sign a new one, or whether to consider IOTC as having succeeded to the present agreement once it leaves FAO. On the basis of the above information on the setting up of the original headquarters agreement, it would be possible for the Agreement to be amended between IOTC and the Government of Seychelles, without the need for a formal termination of the Agreement, followed by a re-signing of the new one.

Most of the references in the HQ Agreement to FAO can be replaced by references to IOTC without the substance being affected. However, one clause in particular does impose an obligation on FAO, namely, Article 1 which states:

*3. FAO and IOTC shall assume all legal obligations with respect to its occupancy of the Premises, except as otherwise provided in this Agreement.*

In view of this clause, it is recommended that it is better to terminate the present Agreement and to put in place a completely new Agreement, even though substantially similar in content to the present Agreement. This will also avoid unnecessary arguments about whether or not the agreement is between FAO and the government of Seychelles or IOTC, or whether Article 1 is still operative vis a vis FAO once IOTC has left FAO.

### ***Termination Of The Present Agreement***

The present agreement provides:

*Article 19.2. The present Agreement will remain in effect until the expiry of a period of one year from the date one of the Parties notifies the other of its intent to terminate it.*

The time frame set out here could be impracticable as the notification referred to could not for practical purposes be made until after the Commission has agreed to the termination of the Agreement and its replacement with a new agreement. It would be better, therefore, if the Agreement were terminated by consent of all parties (FAO, IOTC and Seychelles), accompanied by its immediate replacement with a new agreement.

The most secure means of terminating the Agreement is for the Commission to adopt a resolution authorizing the termination of the Agreement and its immediate replacement with the new Agreement as set out below. The exact date for its termination and entry into force will need to be determined. The same resolution could authorize the Chairman or the Executive Secretary to determine the precise date through an exchange of notes with the government of Seychelles. The resolution could also authorize either the Chairman or the Executive Secretary to sign formally the new agreement on behalf of the Commission.

The same resolution could also invite FAO to communicate to both IOTC and to the Government of the Seychelles an instrument terminating the agreement insofar as it concerns FAO from a date to be determined.

It would be important, however, that the text of the proposed agreement be discussed in detail with the authorities of the Seychelles so that its text is settled well in advance of its adoption by the Commission. This will avoid the need for last minute changes.

A drafted resolution will need to be prepared to deal with these matters, as well as a draft exchange of notes.

## INDIAN OCEAN TUNA COMMISSION HEADQUARTERS AGREEMENT

### *Between*

~~The Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") the Indian Ocean Tuna Commission and the Government of the Republic of Seychelles (hereinafter referred to as "the Government")~~

Whereas the Indian Ocean Tuna Commission was established within the framework of the Food and Agriculture Organization (hereinafter referred to as FAO) by the Agreement for the establishment of the Indian Ocean Tuna Commission (hereafter referred to as IOTC), approved by the Council of FAO at its Hundred and Fifth Session in November 1993, which entered into force upon receipt of the tenth instrument of acceptance by its Depositary, the Director-General of FAO, on 27 March 1996,

Whereas the Commission at its First Session held in Rome from 3 to 6 December 1996, after consultation with the Director-General of FAO in accordance with Article XIV of the Agreement establishing it, decided to set up its headquarters in Seychelles,

Whereas the IOTC decided at the ~~???~~Eleventh Ssession to amend the Agreement in order to place itself outside the framework of FAO in order to achieve greater efficiency and effectiveness in the management of the tuna resources of the Indian Ocean

Now therefore, ~~The Food and Agriculture Organization acting on behalf of the Indian Ocean Tuna Commission (hereinafter referred as IOTC)~~ and the Government of the Republic of Seychelles have agreed as follows:

### I. PREMISES

#### *Article 1*

1. The Government of Seychelles shall make available for the exclusive use of IOTC, free of charge, the necessary premises which will serve as the headquarters of IOTC and other ancillary facilities.
2. The Premises and other ancillary facilities made available to IOTC for this purpose are described in the annex to the present Agreement. This annex may be amended by agreement between the Government of Seychelles and ~~FAO subject to previous approval by~~ the Commission.
3. ~~FAO and~~ IOTC shall assume all legal obligations with respect to its occupancy of the Premises, except as otherwise provided in this Agreement.

#### *Article 2*

1. The Premises of IOTC ("the Premises") shall be inviolable.
2. The consent of the Secretary of the Commission shall be required for access to the Premises. However, the consent of the Secretary of IOTC shall be presumed to have been given in the event of a fire or other emergency demanding immediate protective measures.
3. The Government of Seychelles shall take every appropriate measure to prevent an attack on or damage to the Premises, a disturbance of the peace, or a violation of the dignity of the Premises of IOTC.
4. The residence of the Secretary and of the other staff members of IOTC referred to in Article 11.1, and who are not nationals of Seychelles or permanent residents in Seychelles, shall enjoy the same inviolability and protection as the Premises.

### ***Article 3***

IOTC shall enjoy legal personality on the territory of Seychelles and shall act through its Secretary.

## **II. PRIVILEGES, IMMUNITIES AND FACILITIES ACCORDED TO IOTC**

### ***Article 4***

The Government of Seychelles undertakes to accord the following privileges, immunities and facilities to IOTC and its property, funds and assets, wherever located in the Seychelles:

(a) immunity from every form of legal process except insofar as in any particular case IOTC has expressly waived immunity;

(b) immunity from search, requisition, confiscation, expropriation and any other form of interference;

(c) for the purposes of performing its functions, freedom to hold funds or currency of any kind, to operate accounts in any currency, to transfer funds or foreign currency within Seychelles or abroad, and to convert, through the banking system in Seychelles, any foreign currency into any other currency as well as to receive donations;

(d) freedom from censorship of official correspondence and other official communications;

(e) exemption from all direct and indirect taxes on the property, income (including income from sale of publications produced or revenue obtained from the provision of services against payment), and official transactions of IOTC, except taxes that are no more than charges for services rendered;

(f) exemption from the payment of excises or sales taxes on purchases of immovable or movable property or of goods and services, which are necessary for the performance of its official functions;

(g) exemption from customs duties, taxes, prohibitions and restrictions on imports and exports in respect of goods, articles and publications imported or exported by IOTC for the purposes of performing its functions or on publications issued by IOTC.

### ***Article 5***

Any waiver of immunity under Article 4 above shall be done expressly by the Secretary of the Commission.

### ***Article 6***

IOTC's records and, generally, all documents belonging to IOTC shall be inviolable, regardless of their location.

### ***Article 7***

Property belonging to IOTC may not be sold or otherwise disposed of, for a fee or without charge, on Seychelles territory, except under the conditions prescribed by Seychelles legislation.

### ***Article 8***

1. In exercising the rights granted to it under Article 4(c), IOTC will take into account any representations made by the Government of Seychelles, to the extent it deems it can act upon them without prejudicing its own interests.

2. The Government of Seychelles undertakes to grant to IOTC the facilities and authorities necessary for it to effect any transfer of funds or currency or movement of funds occasioned by IOTC's operations.

### ***Article 9***

1. The Government of Seychelles shall guarantee the IOTC freedom of communication for its official purposes.
2. The correspondence of IOTC shall be inviolable.

### III. PRIVILEGES, IMMUNITIES AND FACILITIES ACCORDED TO REPRESENTATIVES OF STATES AND REGIONAL ECONOMIC INTEGRATION ORGANIZATIONS, ~~FAO~~, OTHER INTER-GOVERNMENTAL ORGANIZATIONS, AND TO EXPERTS AND CONSULTANTS

#### *Article 10*

The Government undertakes to accord, while exercising their functions or attending meetings in connection with the work of IOTC and during their journeys to and from the place of meeting, to the representatives of any State, and regional economic integration organization, ~~FAO~~, other inter-governmental organization and their spouses as well as to experts invited in their personal capacity and consultants recruited by IOTC ~~or FAO~~, the following privileges, immunities and facilities :

- (a) immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) inviolability for all papers and documents;
- (c) exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations;
- (d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions.

### IV. PRIVILEGES, IMMUNITIES AND FACILITIES ACCORDED TO IOTC STAFF

#### *Article 11*

1. The Secretary of IOTC and the other staff members of the Secretariat in the Professional category as defined in the ~~FAO-IOTC~~ Staff Regulations, designated by the Secretary, as well as their spouses and their children living under their roof, shall enjoy the immunities, privileges and facilities accorded to members of the diplomatic staff of diplomatic missions.

2. The Secretary of IOTC and the other Professional staff members of the Secretariat shall enjoy the right to import without taxes and re-export their personal furniture and effects as well as one automobile for personal use and replacements therefore in accordance with normal diplomatic usages in Seychelles.

#### *Article 12*

The Secretary of IOTC and the other Professional staff members of the Secretariat shall enjoy, with respect to currency or exchange control regulations, the facilities usually accorded to the staff of diplomatic missions.

#### *Article 13*

Staff members of IOTC Secretariat shall enjoy:

- (a) jurisdictional immunity with respect to acts performed in their official capacity, including their spoken and written communications, and this immunity continues after termination of their functions;

(b) exemption from Seychelles authorities from all taxes in respect of the salaries, emoluments and allowances paid to them by IOTC ~~or FAO~~;

(c) inviolability with respect to all their official documents and papers;

(d) together with those members of their family living under their roof, the same exceptions to the provisions limiting immigration and alien registration as are accorded in Seychelles to officials of comparable rank of diplomatic missions;

(e) together with those members of their family living under their roof, exemption from the requirements of Seychelles legislation respecting the employment of foreigners and the practice of independent professions by foreigners, on the condition they have no gainful occupation in Seychelles other than the performance of their duties in the IOTC Secretariat;

(f) together with those members of their family living under their roof, the same repatriation facilities in time of crisis as officials of comparable rank of diplomatic missions;

(g) the right to import free of duty their furniture and effects, including one car, at the time of first taking up their post in IOTC, as well as replacement of such furniture and effects, including a car, for those staff members not covered by Article 11, at such intervals as may be agreed upon by IOTC and the Government of Seychelles.

#### *Article 14*

1. The Secretary of IOTC shall notify Seychelles authorities of the arrival in the country and departure from the country of the IOTC staff members and, where appropriate, the date of termination of their functions.

2. IOTC staff will receive a special identity card, issued by the competent Government Authorities.

#### V. SOCIAL SECURITY

#### *Article 15*

1. The IOTC undertakes to ensure that staff of the Commission will be provided with an adequate and effective social security system

~~1. In accordance with Article VIII, paragraph 1, of the Agreement establishing IOTC, the Secretary and staff of IOTC shall be appointed under the same terms and conditions as staff members of FAO; as a consequence all IOTC staff members, except those seconded by the Government, shall be enrolled in FAO's social security system.~~

2. Persons employed by IOTC who are not IOTC staff members, and are neither nationals nor permanent residents of Seychelles and have no gainful occupation other than the performance of their official duties in IOTC, and are not covered by ~~the FAO's~~ social security system arrangements adopted by the Commission, may opt for coverage under Seychelles legislation.

3. This right of option may be exercised only once, within three months of the commencement of functions in Seychelles.

4. With respect to persons having opted for coverage under Seychelles legislation, the Secretariat of IOTC shall apply the relevant Seychelles legislation.

5. The Secretary shall ensure that persons employed by IOTC, having refused coverage under Seychelles legislation and who are not covered by the ~~FAO Social Security System arrangements~~, are covered by an adequate social security plan, in default of which Seychelles may obtain reimbursement from IOTC of

any costs incurred by the provision of any social assistance or medical care by the Seychelles Government as a result of such refusal.

## VI. NATIONALS OF SEYCHELLES AND PERMANENT RESIDENTS IN SEYCHELLES

### *Article 16*

1. Seychelles is not bound to grant to its own nationals and permanent residents the privileges, immunities and facilities provided for in Articles 10, 11, 12 and in paragraphs (d), (e), (f) and (g) of Article 13 of the present Agreement.

2. Nevertheless, nationals of Seychelles and permanent residents, will enjoy the privileges and immunities provided for in Article 10, paragraphs (a), (b) and (c) with regard to Immigration restrictions in respect of themselves and their spouses and in paragraphs (a), (b) and (c) of Article 13 of the present Agreement.

## VII. ENFORCEMENT OF THE LAWS OF SEYCHELLES

### *Article 17*

1. The Secretary and other staff of IOTC will not enjoy any jurisdictional immunity with respect to moving traffic violations, or damage caused by a motor vehicle.

2. The Secretary of IOTC and other staff of IOTC, shall comply with all requirements of the laws and regulations of Seychelles respecting automobile liability insurance.

### *Article 18*

The Secretary of IOTC and other staff of IOTC will cooperate at all times with the competent Seychelles authorities to facilitate the effective administration of justice, ensure compliance with the Laws of Seychelles, and prevent any abuse of the privileges, immunities and facilities provided for in the present Agreement.

## VIII. FINAL CLAUSES

### *Article 19*

1. The present Agreement shall come into force upon notification by the Parties that their respective internal requirements have been complied with.

2. The present Agreement will remain in effect until the expiry of a period of one year from the date one of the Parties notifies the other of its intent to terminate it.

Done at .....on....., 1997, the French and English texts being equally authentic.

For the ~~Food and Agriculture Organization~~ Indian Ocean Tuna Commission

[            ]

For the Government of the  
of the ~~United Nations~~ Republic of Seychelles

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## *Annex To The Headquarters Agreement*

Article 1, paragraph 1, of the Headquarters Agreement states that the Government of Seychelles shall make available for the exclusive use of IOTC, free of charge, the premises necessary for the performance of the functions of its headquarters.

Paragraph 2 of Article 1 points out that the offices and other facilities made available to IOTC for this purpose are described in the annex to the Headquarters Agreement.

As a consequence, the present annex to the Headquarters Agreement describes the offices offered to IOTC by the Government of Seychelles and lists the other facilities provided to IOTC by the Government of Seychelles.

The Government of Seychelles undertakes to:

(i) provide to IOTC for its exclusive use, modern office accommodation commensurate to the needs of the Secretariat ~~situated on Victoria international fishing port, as described thereto and comprising six large~~ comprising fully furnished, air conditioned offices, including ~~and a fully furnished and air conditioned~~ a meeting room, and ensure the maintenance of these premises;

(ii) arrange for and bear the cost of any necessary repairs to the premises referred to in (i) above;

(iii) install and provide electricity and water needed for the use of the office premises and bear the consumption costs;

(iv) install telephones;

(v) provide a vehicle for the exclusive use of IOTC;

(vi) fund the services of: a

(a) 1 systems analyst/programmer;

~~(a)(b)~~ 2 private/personal secretaries of grade 2 up to grade 4.

(vii) ensure permanent security of the premises of IOTC and of the Secretary's residence;

~~(viii) make available fully furnished houses to two senior members of the expatriate staff of IOTC;~~

~~(viiiix) endeavour, at the request of IOTC, to arrange for the appropriate housing for expatriate staff of IOTC and their families.~~