

No. 24675

AUSTRALIA
and
COMMISSION FOR THE CONSERVATION
OF ANTARCTIC MARINE LIVING RESOURCES

Headquarters Agreement. Signed at Hobart, Australia, on
8 September 1986

Authentic texts: English, French, Russian and Spanish.

Registered by Australia on 10 April 1987.

AUSTRALIE
et
COMMISSION POUR LA CONSERVATION
DE LA FAUNE ET LA FLORE MARINES
DE L'ANTARCTIQUE

Accord de siège. Signé à Hobart (Australie) le 8 septembre
1986

Textes authentiques : anglais, français, russe et espagnol.

Enregistré par l'Australie le 10 avril 1987.

HEADQUARTERS AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE COMMISSION FOR THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

The Government of Australia and the Commission for the Conservation of Antarctic Marine Living Resources,

Having regard to Article XIII of the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20 May 1980² which provides that the headquarters of the Commission for the Conservation of Antarctic Marine Living Resources shall be established at Hobart, Tasmania, Australia;

Desiring to define the legal capacity, privileges and immunities of the Commission and the privileges and immunities to be enjoyed by the staff of the Commission in Australia in accordance with Article VIII of the Convention on the Conservation of Antarctic Marine Living Resources; and

Wishing to provide for the privileges and immunities of certain other persons in the interests of facilitating the performance by the Commission of its functions under the Convention for the Conservation of Antarctic Marine Living Resources;

Have agreed as follows:

Article 1. DEFINITIONS

For the purpose of this Agreement:

(a) "Appropriate authorities" means the national, State, Territory or local authorities as the context may require, in accordance with the laws of Australia and its States and Territories;

(b) "Archives" includes all records, correspondence, documents, manuscripts, photographs, computer data storage, films and recordings belonging to or held by the Commission;

(c) "Commission" means the Commission for the Conservation of Antarctic Marine Living Resources and, where the context so requires, includes the Scientific Committee for the Conservation of Antarctic Marine Living Resources, their subsidiary bodies and the Secretariat established by the Convention;

(d) "Convention" means the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20 May 1980, which entered into force on 7 April 1982;

(e) "Envoy" means a diplomatic agent;

(f) "Executive Secretary" means the Executive Secretary appointed under Article XVII of the Convention;

(g) "Expert" means a person performing short term or temporary projects on behalf of the Commission and includes a person serving on the Scientific Committee or on another committee of the Commission or participating in the

¹ Came into force on 8 September 1986 by signature, in accordance with article 26 (1).

² United Nations, *Treaty Series*, vol. 1329, p. 47.

work of or performing a mission on behalf of the Commission or the Scientific Committee, without necessarily receiving remuneration from the Commission or the Scientific Committee, but does not include staff members;

(h) "Government" means the Government of Australia;

(i) "Headquarters" means 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;

(j) "Official activities" means all activities undertaken pursuant to the Convention, including the Commission's administrative activities;

(k) "Parties" means Parties to the Convention;

(l) "Representatives" means representatives of Parties to the Convention in attendance at Conferences or meetings convened by the Commission and includes delegates, alternates, advisers, technical experts and secretaries of delegations;

(m) "Scientific Committee" means the Scientific Committee for the Conservation of Antarctic Marine Living Resources established by Article XIV of the Convention and includes any subsidiary body established by the Scientific Committee under Article XVI(3) of the Convention;

(n) "Serious offence" means an offence under any law of Australia or of a State or Territory of Australia for which a person convicted would be liable on a first conviction to imprisonment for a period of five years or more according to the law applicable in the Australian Capital Territory if the offence had been committed in that Territory; and

(o) "Staff member" means the Executive Secretary and all persons appointed or recruited for full-time employment with the Commission and subject to its staff regulations, but does not include:

(i) Experts; or

(ii) Persons recruited locally and assigned to hourly rates of pay.

Article 2. INTERPRETATION

This Agreement shall be interpreted in the light of its primary objective of enabling the Commission to perform its functions in Australia.

Article 3. LEGAL PERSONALITY

The Commission has legal personality. It has, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal proceedings.

Article 4. PREMISES

1. The Headquarters of the Commission shall be inviolable and shall be under the full authority of the Commission.

2. The Government shall arrange for the provision at nominal rental to the Commission of suitable permanent premises in Hobart, Tasmania, Australia.

3. The Government shall take all appropriate steps to protect the Headquarters of the Commission against any intrusion or damage and to prevent any impairment of its dignity.

4. The Government shall arrange for the Headquarters to be supplied by the appropriate authorities with available public services, such as electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, collection of refuse and fire protection, on terms no less favourable than those enjoyed by the Government.

5. The Commission shall make known to the Government the need for any changes to the location or extent of its permanent premises or archives and of any temporary occupation of premises for the performance of its official activities. Where any premises other than those arranged under Article 4(2) of this Agreement are used or occupied by the Commission for the performance of its official activities, such premises shall, with the concurrence of the Government, be accorded the status of premises of the Commission. Where any permanent or temporary changes are made to the premises of the Commission in accordance with this paragraph, any additional premises occupied by the Commission shall not necessarily be provided by the Government at nominal rental.

6. Without prejudice to the terms of this Agreement, the Commission shall not permit the Headquarters of the Commission to become a refuge from justice for persons avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued.

7. The appropriate authorities may enter the Headquarters to carry out their duties only with the consent of the Executive Secretary and under the conditions agreed by him. The Executive Secretary's consent shall be deemed to have been given in the case of fire or other occurrence which may require immediate protective action.

Article 5. IMMUNITIES OF THE COMMISSION

1. Except as otherwise provided in the Convention or in this Agreement, the activities of the Commission in Australia shall be governed by the laws of Australia.

2. Within the scope of its official activities the Commission and its property, premises and assets shall have immunity from suit and other legal process except:

- (a) To the extent that the Commission expressly waives such immunity from such suit and other legal process in a particular case;
- (b) 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 such transaction or of any other financial obligation;
- (c) In respect of a civil action by a third party for death, damage or personal injury arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Commission;
- (d) In respect of a motor vehicle offence involving a motor vehicle belonging to, or operated on behalf of, the Commission;
- (e) In the event of the attachment, pursuant to the final order of a court of law, of the salaries, wages or other emoluments owed by the Commission to a staff member of the Commission or to an expert;
- (f) In respect of a counter-claim directly connected with proceedings initiated by the Commission; and
- (g) In respect of the enforcement of an arbitration award made under Articles (20)(3) or 25 of this Agreement.

3. The Commission's property, premises and assets, wherever situated, shall have immunity from any form of restrictions or controls such as requisition, confiscation, expropriation or attachment. They shall also be immune from 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. These 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.

Article 6. ARCHIVES

The archives of the Commission shall be inviolable wherever they are.

Article 7. 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.

Article 8. EXEMPTION FROM DIRECT TAXES

1. Within the scope of its official activities, the Commission, its property, premises and assets, and its income, including contributions made to the Commission under the Convention, shall be exempt from all direct taxes including income tax, capital gains tax and corporation tax, and all State taxes. The Commission shall be exempt from municipal rates with the exception of those which constitute payment for specific services rendered in accordance with Article 4(4).

2. The exemption from taxation on income provided for in Article 8(1) and in Articles 16 and 17 shall be given on the understanding that no taxation shall be imposed on such income by other Parties.

*Article 9. EXEMPTION FROM CUSTOMS AND EXCISE
DUTIES AND SALES TAX*

1. Goods, including the Commission's publications, motor vehicles and items for official entertainment purposes that are intended for the official use of the Commission shall be exempt from all customs and excise duties including sales tax payable at the customs, except payment for services.

2. Sales tax shall not be payable in respect of goods, including publications and other information material, motor vehicles and items for official entertainment purposes, upon the sale of which to the Commission sales tax would otherwise be payable by the vendor, if the goods so purchased by the Commission are necessary for its official use.

Article 10. EXEMPTION FROM RESTRICTIONS AND PROHIBITIONS

Goods imported or exported for the official activities of the Commission shall be exempt from prohibitions and restrictions applicable to such goods on grounds of national origin.

Article 11. RE-SALE

Goods which have been acquired or imported by the Commission to which exemptions under Article 9 of this Agreement apply and goods acquired or

imported by the Executive Secretary under Article 16 of this Agreement shall not be given away, sold, lent, hired out or otherwise disposed of in Australia except under conditions agreed in advance with the Government.

Article 12. CURRENCY AND EXCHANGE

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

Article 13. COMMUNICATIONS

1. With regard to its official communications and the transfer of all its documents, the Commission shall enjoy treatment not less favourable than that generally accorded to equivalent inter-governmental organisations in the matter of priorities, rates and taxes on mails and all forms of telecommunications.

2. The Commission may employ all appropriate means of communication, including messages in code or cypher. The Government shall not impose any restriction on the official communications of the Commission or on the circulation of its publications.

3. The Commission may install and use a radio transmitter only with the consent of the Government.

4. Official correspondence and other official communications of the Commission are not subject to censorship.

Article 14. PUBLICATIONS

The importation and exportation of the Commission's publications and other information material imported or exported by the Commission within the scope of its official activities shall not be restricted in any way.

Article 15. REPRESENTATIVES IN ATTENDANCE AT CONFERENCES CONVENED BY THE COMMISSION

1. Representatives shall enjoy, while exercising their functions in Australia and while travelling in the exercise of their functions in Australia, the following privileges and immunities:

- (a) Immunity from arrest and detention and from attachment of personal luggage except when found committing, attempting to commit or just having committed a serious offence;
- (b) Inviolability of representatives' residences in Australia occupied during the course of their functions;
- (c) 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; this immunity shall not, however, apply in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by them;
- (d) Inviolability for all their official papers and documents;

- (e) Exemption (including exemption of the spouse of the representative) from the application of laws relating to the registration of aliens, the obligation to perform national service and any other national duty, and immigration;
- (f) Unless they are citizens of or permanently resident in Australia, the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign government on a temporary mission to Australia on behalf of that government;
- (g) The same exemptions in relation to inspection of their personal baggage as are accorded to envoys;
- (h) The right to use codes and to send and receive correspondence and other papers and documents by couriers or in sealed bags;
- (i) Unless they are citizens of or permanently resident in Australia, the same exemption from taxes on income as is accorded an envoy in Australia; and
- (j) Similar repatriation facilities including such facilities in respect of a spouse and dependent relatives, in time of international crisis as are accorded to an envoy.

2. The provisions of the preceding paragraph shall be applicable irrespective of the relations existing between the governments which the persons referred to represent and the Government, and are without prejudice to any additional immunities to which such persons may be entitled.

3. In order to assist the Government to implement the provisions of this Article, the Commission shall, so far as possible, inform the Government of the names of representatives prior to their arrival in Australia.

4. The privileges and immunities described in paragraph 1 of this Article shall not be accorded to any representative of the Government or to any citizen or permanent resident of Australia.

5. Privileges and immunities are accorded to the representatives of Parties not for the personal benefit of individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Commission. Consequently, 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 can be waived without prejudice to the purpose for which the immunity is accorded. If the Party sending the representative does not waive the immunity of the representative, it shall make the strongest efforts to achieve an equitable solution of the matter.

6. The Government shall treat representatives with all 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, steps shall be taken in accordance with Australian legal processes to investigate the matter and to ensure that appropriate action is taken with respect to the prosecution of the alleged offender.

Article 16. EXECUTIVE SECRETARY

In addition to the privileges, immunities, exemptions and facilities provided for in Article 17 of this Agreement, the Executive Secretary, unless he is a citizen of or permanently resident in Australia, shall enjoy the privileges, immunities, exemptions and facilities to which an envoy in Australia is entitled, including

privileges, immunities, exemptions and facilities in respect of a spouse and dependent children under the age of eighteen years.

Article 17. STAFF MEMBERS

Staff members of the Commission:

- (a) Shall have, even after the termination of their service with the Commission, immunity 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; this immunity shall not, however, apply in the case of a motor vehicle offence committed by such a staff member nor in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by him;
- (b) Shall be exempt from any obligations in respect of national service and all other kinds of mandatory service; staff members who are Australian citizens or permanent residents shall be accorded such exemption only if their names have been placed on a list compiled for that purpose by the Executive Secretary and approved by the Government;
- (c) Shall be exempt from the application of laws relating to the registration of aliens and immigration; the spouse and dependent children under the age of eighteen years of a staff member shall enjoy the same exemptions;
- (d) Unless they are citizens of or permanently resident in Australia, shall 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 Australia;
- (e) Unless they are citizens of or permanently resident in Australia shall, at the time of first taking up their post in Australia, be exempt from customs duties and other such charges (except payments for services) in respect of import of furniture and personal effects including motor vehicles in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of a staff member's first entry into Australia but in exceptional circumstances an extension of this period shall be granted by the Government; goods which have been acquired or imported by staff members and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government; furniture and personal effects including motor vehicles may be exported free of duties when leaving Australia on the termination of the official functions of the staff member;
- (f) Shall be exempt from all taxes on income received from the Commission; exemption from taxation on income under this sub-paragraph shall not apply to staff members who are residents of Australia for services rendered in Australia, unless the staff member is not an Australian citizen and came to Australia solely for the purpose of performing his duties for the Commission; and
- (g) Shall have similar repatriation facilities, including such facilities in respect of a spouse and dependent relatives in time of international crisis as are accorded to an envoy.

Article 18. EXPERTS

In the exercise of their functions experts shall enjoy the following privileges and immunities to the extent necessary for the carrying out of their functions, including during travel undertaken in Australia in carrying out their functions:

- (a) Immunity from suit and other legal process in respect of acts and things done in the exercise of their official functions, including words written or spoken; this immunity shall not, however, apply in the case of a motor vehicle offence committed by such an expert, nor in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by him; such immunity shall continue after the expert's function in relations to the Commission have ceased;
- (b) Inviolability for all their official papers and documents;
- (c) Unless they are citizens of or permanently resident in Australia, the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign government on a temporary mission in Australia on behalf of that government; and
- (d) Unless they are citizens of or permanent residents of Australia, immunity from personal arrest and detention and from attachment of personal luggage except when found committing, attempting to commit or just having committed a serious offence.

Article 19. VISAS

1. All persons having official business with the Commission, namely (a) representatives of Parties (and their spouses), (b) staff members of the Commission (and their spouses and dependent relatives), and (c) experts and consultants on missions for the Commission, should have the right of entry into and exit from Australia.

2. The Government shall take all measures necessary to facilitate the entry into Australian territory, the sojourn on this territory and the exit therefrom of all persons mentioned in the preceding paragraph. 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. In addition, the Australian Government will facilitate for such persons speedy travel within Australia.

Article 20. OBJECT OF PRIVILEGES AND IMMUNITIES ACCORDED TO STAFF MEMBERS AND EXPERTS

1. 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 purposes of the Convention.

2. The Executive Secretary has the right and duty after consultations with the members of the Commission to waive any immunities, other than his own, and those of his spouse and dependent children under the age of eighteen years, when he considers that such immunities would impede the course of justice and they can be waived without prejudicing the purposes for which they were accorded. The immunities of the Executive Secretary and those of his spouse and dependent children under the age of eighteen years may be waived only by the Commission, in similar circumstances.

3. If such immunities are not waived, the Commission shall make the strongest efforts to achieve an equitable solution of the matter. Such a solution may include an arbitration procedure.

Article 21. CO-OPERATION

The Commission shall co-operate fully at all times with the appropriate authorities in order to prevent any abuse of the privileges, immunities and facilities provided for in this Agreement. The Government reserves its sovereign right to take reasonable measures to preserve security. Nothing in this Agreement prevents the application of laws necessary for health and quarantine or, in respect of the Commission and its officials, laws relating to public order.

Article 22. NOTIFICATION OF APPOINTMENT; IDENTITY CARDS

1. The Commission shall inform the Government when a staff member or expert takes up or relinquishes his post. Where possible, prior notice of arrival and final departure shall be given. If staff members are accompanied by a spouse or dependent children under the age of eighteen years, prior notice shall also be given, where possible, in respect of such persons.

2. The Commission shall twice each year send to the Government a list of all staff members, their spouses and dependent children under the age of eighteen years accompanying them in Australia, and experts. In each case the Commission shall indicate whether such persons are citizens of or permanently resident in Australia.

3. The Government shall issue to all staff members and experts as soon as practicable after notification of their appointment, a card bearing the photograph of the holder and identifying him as a staff member or expert as the case may be. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The Commission shall return the card to the Government when the staff member or expert relinquishes his duties. The spouse and dependent children under the age of eighteen years of staff members shall also be issued with an identity card, which shall be returned to the Government when the staff member relinquishes his duties.

Article 23. CONSULTATIONS

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

Article 24. AMENDMENT

This Agreement may be amended by agreement between the Government and the Commission.

Article 25. 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 the Annex to the Convention.

Article 26. ENTRY INTO FORCE AND TERMINATION

1. This Agreement shall enter into force on signature.

2. Immediately on its entering into force, this Agreement shall terminate the Interim Agreement between the Government of Australia and the Commission for the Conservation of Antarctic Marine Living Resources concerning Privileges and Immunities of the Commission done at Canberra on 15 August 1983¹ as extended.

3. 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 Australia, this Agreement shall, after a period reasonably required for such transfer and the disposal of the property of the Commission in Australia, 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.

[For the testimonium and signatures, see p. 183 of this volume.]

¹ United Nations, *Treaty Series*, vol. 1424, No. I-24046; vol. 1426, No. A-24046, and p. 379 of this volume.