United Nations Nations Unies

Executive Office of the Secretary-General
Cabinet du Secrétaire géneral

To: CDC (through ODSG),

1. Please see attached the request for the Secretary-General to provide Mr. Serpa Soares with full powers to sign on his behalf the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.

2. I recommend that full powers be provided to Mr. Serpa Soares in accordance with standard practice.

Edric Selous
Rule of Law Unit
19 February 2015

15-01421

Received in ODSG
19 Feb 2015

Seen by:
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LEG/03/01
LEG/03/011

THE SECRETARY-GENERAL

FULL POWERS

I, BAN Ki-moon, Secretary-General of the United Nations,

HEREBY AUTHORIZE Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to sign the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.

Done at New York, on the 20th day of February 2015.

BAN Ki-moon

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LEGAL DIVISION

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OF THE SECRETARY-GENERAL

Urgent

Note to the Secretary-General

Through Ms. Malcorra

International Residual Mechanism for Criminal Tribunals:
Issuance of Instrument of Full Powers

1. For a number of years, my Office and Legal Affairs and the International Residual Mechanism for Criminal Tribunals ("Mechanism") have engaged in detailed negotiations with the Dutch Government on an Headquarters Agreement for the Branch of the Mechanism located in The Hague. Late last year, the parties initialled the attached text in that regard, upon the basis of which the Dutch Government has now authorised formal signature of the Agreement.

2. Opportunity for signature of the Agreement by the Dutch Permanent Representative and myself has arisen, at short notice, for next Monday, 23 February 2015. We, and the Mechanism, would very much wish to take advantage of this opportunity, in order to strengthen the Mechanism's legal position in the Netherlands. Upon signature, the Agreement would be the subject of ratification proceedings in the Dutch Parliament.

3. I therefore attach, for the Secretary-General's consideration, a proposed instrument of full powers authorising me to sign this Agreement.

Miguel de Serpa Soares
18 February 2015

LEG/02/006; LEG/03/011

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE:

FULL POWERS

I, Ban Ki-moon, Secretary-General of the United Nations,

HEREBY AUTHORIZE Mr. Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, to sign the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.

Done at New York, on the ____ day of February 2015.

To:
Cc:
Bcc:
Subject: Fw: Note from Mr. Miguel de Serpa Soares, USG/OLA, to the SG re: International Residual Mechanism for Criminal Tribunals: Issuance of Instrument of Full Powers

From: Mae Arkoncel/NY/UNO
To: Susana Malcorra/NY/UNO@UNHQ,
Cc: Yvette Blanco/NY/UNO@UNHQ, Lorea Salterain/NY/UNO@UNHQ, Sophia Williamson/NY/UNO@UNHQ, SGCentral/NY/UNO@UNHQ, Miguel De Serpa Soares/NY/UNO@UNHQ, Stephane Wohlfahrt/NY/UNO@UNHQ, Paul Oertly/NY/UNO@UNHQ, Philomena Cleobury/NY/UNO@UNHQ, Ronja Bandyopadhyay/NY/UNO@UNHQ, Anna Litvaka/NY/UNO@UNHQ, Valerie Bertrand/NY/UNO@UNHQ, Allison Primus/NY/UNO@UNHQ, Yoliswa Nxumalo/NY/UNO@UNHQ, Frank Smyth/NY/UNO, Markus Pallek/NY/UNO, Azhael A Quinonez/NY/UNO@UNHQ
Date: 18/02/2015 05:13 PM
Subject: Note from Mr. Miguel de Serpa Soares, USG/OLA, to the SG re: International Residual Mechanism for Criminal Tribunals: Issuance of Instrument of Full Powers

Dear Ms. Malcorra,

On behalf of Mr. Serpa Soares, please find attached his note to the SG, submitted through you, on the above subject., along with the Word version of the Full Powers for the SG's signature.

Many thanks,

Mae

Mae Arkoncel
Personal Assistant to the Under-Secretary-General
for Legal Affairs
United Nations
Room: S-3621
New York, NY 10017
Tel.: (212) 963-3549
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Email: arkoncel@un.org

2015.02.18 Note from MSS to the SG through Ms. Malcorra re Intl Residual Mechanism for Criminal Tribunal.pdf

Full powers MSS Feb 2015-final.doc

Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals

Whereas the Security Council of the United Nations acting under Chapter VII of the Charter of the United Nations decided by its resolution 1966 (2010) adopted on 22 December 2010 to establish the International Residual Mechanism for Criminal Tribunals with two branches, one for the International Criminal Tribunal for Rwanda (ICTR) and the other for the International Tribunal for the former Yugoslavia (ICTY);

Whereas the International Residual Mechanism for Criminal Tribunals is established as a subsidiary organ within the terms of Article 29 of the Charter of the United Nations;

Whereas Article 3 of the Statute of the International Residual Mechanism for Criminal Tribunals, Annex 1 to Security Council resolution 1966 (2010), provides that the branch for the ICTR shall have its seat in Arusha and the branch for the ICTY shall have its seat in The Hague;

Whereas the Security Council, by resolution 1966 (2010), decided that the determination of the seats of the branches of the Mechanism is subject to the conclusion of appropriate arrangements between the United Nations and the host countries of the branches of the Mechanism acceptable to the Security Council;

Whereas the United Nations and the Kingdom of the Netherlands wish to conclude an agreement to facilitate the smooth and efficient functioning of the International Residual Mechanism for Criminal Tribunals in the Kingdom of the Netherlands;

The United Nations and the Kingdom of the Netherlands have agreed as follows:

PART I. GENERAL PROVISIONS

Article 1. Use of terms

For the purpose of this Agreement:

a) "accused" means a person referred to as such in the Statute;

b) "competent authorities" means national, provincial, municipal and other competent authorities under the laws, regulations and customs of the host State;

c) "defence counsel" means a person admitted as counsel by the Mechanism;

d) "experts on mission for the Mechanism" means those persons, other than officials of the Mechanism, who perform missions for the Mechanism;

e) "General Convention" means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946, to which the Kingdom of the Netherlands acceded on 19 April 1948;

f) "host State" means the Kingdom of the Netherlands;

g) "ICTR" means the International Criminal Tribunal for Rwanda, established by the Security Council pursuant to its resolution 955 (1994);

h) "ICTY" means the International Tribunal for the former Yugoslavia, established by the Security Council pursuant to its resolutions 808 (1993) and 827 (1993);

i) "interns" means graduate or postgraduate students or young professionals who, not being staff of the Mechanism, have been accepted by the Mechanism into the internship or fellowship programme of the Mechanism for the purpose of performing certain tasks for the Mechanism without receiving a salary from the Mechanism;

j) "judges" means the judges of the Mechanism elected or appointed in accordance with Article 10 of the Statute;

k) "Mechanism" means the International Residual Mechanism for Criminal Tribunals, established by the Security Council pursuant to its resolution 1966 (2010);

l) "Ministry of Foreign Affairs" means the Ministry of Foreign Affairs of the host State;

m) "officials of the Mechanism" means the President, the judges, the Prosecutor, the Registrar and the staff of the Mechanism;

n) "Parties" means the United Nations and the host State;

o) "premises" means buildings, parts of buildings and areas, including installations and facilities made available to, maintained, occupied or used by the Mechanism in the host State in consultation with the host State, in connection with its functions and purposes, including detention of a person;

p) "President" means the President of the Mechanism appointed by the Secretary-General in accordance with Article 11, paragraph 1, of the Statute;

q) "Prosecutor" means the Prosecutor of the Mechanism appointed by the Security Council in accordance with Article 14, paragraph 4, of the Statute;

r) "Registrar" means the Registrar of the Mechanism appointed by the Secretary-General in accordance with Article 15, paragraph 3, of the Statute;

s) "Resolution 1966" means Security Council resolution 1966 (2010) adopted on 22 December 2010, which established the Mechanism;

t) "Rules of Procedure and Evidence" means the Rules of Procedure and Evidence of the Mechanism adopted in accordance with Article 13 of the Statute;

u) "Secretary-General" means the Secretary-General of the United Nations;

v) "staff of the Mechanism" means the staff of the Registry as referred to in Article 15, paragraph 4, of the Statute and the staff of the Office of the Prosecutor as referred to in Article 14, paragraph 5, of the Statute;

w) "Statute" means the Statute of the International Residual Mechanism for Criminal Tribunals, as annexed to Security Council resolution 1966 (2010);

x) "Vienna Convention" means the Vienna Convention on Diplomatic Relations done at Vienna on 18 April 1961, to which the Kingdom of the Netherlands acceded on 7 September 1984; and

y) "witnesses" means persons designated as such by the Mechanism.

Article 2. Purpose and scope of this Agreement

This Agreement shall regulate matters relating to or arising out of the establishment and the proper functioning of the Mechanism in the host State. It shall, *inter alia*, create conditions conducive to the stability and independence of the Mechanism and facilitate its smooth and efficient functioning, including, in particular, its needs with regard to all persons required by the Mechanism to be present at

its seat and with regard to the transfer of information, potential evidence and evidence into and out of the host State, and the preservation of and access to its archives.

PART II. STATUS OF THE MECHANISM

Article 3. Juridical personality

1. The Mechanism shall possess full juridical personality in the host State. This shall, in particular, include the capacity:

   a) to contract;

   b) to acquire and dispose of movable and immovable property; and

   c) to institute legal proceedings.

2. For the purposes of this Article, the Mechanism shall be represented by the Registrar.

Article 4. Privileges, immunities and facilities

1. The Mechanism shall enjoy, in the territory of the host State, such privileges, immunities and facilities as are necessary for the fulfilment of its purposes.

2. The General Convention shall apply to the Mechanism and the archives of the Mechanism, the ICTY and the ICTR.

Article 5. Inviolability of the premises

1. The premises shall be inviolable. The competent authorities shall ensure that the Mechanism is not dispossessed and/or deprived of all or any part of its premises without its express consent.

2. The competent authorities shall not enter the premises to perform any official duty, except with the express consent, or at the request of the Registrar, or an official designated by him or her. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises except with the consent of, and in accordance with conditions approved by, the Registrar, or an official designated by him or her.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises, the consent of the Registrar, or an official designated by him or her, to any necessary entry into the premises shall be presumed if neither of them can be contacted in time.

4. Subject to paragraphs 1, 2 and 3 of this Article, the competent authorities shall take the necessary action to protect the premises against fire or other emergency.

5. The Mechanism shall prevent its premises from being used as a refuge by persons who are avoiding arrest or the proper administration of justice under any law of the host State.

Article 6. Protection of the premises and their vicinity

1. The competent authorities shall take all effective and adequate measures to ensure the security and protection of the Mechanism and to ensure that the tranquillity of the Mechanism is not disturbed by the intrusion of persons or groups from outside the premises or by disturbances in its immediate vicinity, and shall provide to the premises the appropriate protection as may be required.

2. If so requested by the Registrar, or an official designated by him or her, the competent authorities shall, in consultation with the Registrar, or an official designated by him or her, to the extent it is deemed necessary by the competent authorities, provide adequate protection, including police protection, for the preservation of law and order on the premises or in the immediate vicinity thereof, and for the removal of persons therefrom.

3. The competent authorities shall take all reasonable steps to ensure that the amenities of the premises are not prejudiced and that the purposes for which the premises are required are not obstructed by any use made of the land or buildings in the vicinity of the premises.

4. The Mechanism shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the premises are not prejudiced by any use made of the land or buildings on the premises.

5. The Mechanism shall provide the competent authorities with all information relevant to the security and protection of the premises.

Article 7. Law and authority on the premises

1. The premises shall be under the control and authority of the Mechanism, as provided in this Agreement.

2. Except as otherwise provided in this Agreement or the General Convention, the laws and regulations of the host State shall apply on the premises.

3. The Mechanism shall have the power to make its own rules and regulations operative on its premises and apply other United Nations rules and regulations as are necessary for the carrying out of its functions. The Mechanism shall promptly inform the competent authorities upon the adoption of such regulations. No laws or regulations of the host State which are inconsistent with the rules and regulations of the United Nations or of the Mechanism under this paragraph shall, to the extent of such inconsistency, be applicable on the premises.

4. The Mechanism may expel or exclude persons from the premises for violation of the applicable rules or regulations and shall promptly inform the competent authorities of such measures.

5. Subject to the rules and regulations referred to in paragraph 3 of this Article, and consistent with the laws and regulations of the host State, only staff of the Mechanism authorized by the Registrar, or an official designated by him or her, shall be allowed to carry arms on the premises.

6. The Registrar, or an official designated by him or her, shall notify the host State of the name and identity of staff of the Mechanism authorized by the Registrar, or an official designated by him or her, to carry arms on the premises, as well as the name, type, calibre and serial number of the arm or arms at his or her disposition.

7. Any dispute between the Mechanism and the host State as to whether a rule or regulation of the Mechanism or the United Nations comes within the ambit of this Article or as to whether a law or regulation of the host State is inconsistent with a rule or regulation of the United Nations or the Mechanism under this Article shall promptly be settled by the procedure under Article 44 of this Agreement. Pending such settlement, the rule or regulation that is the subject of the dispute shall apply and the law or regulation of the host State shall be inapplicable on the premises to the extent that the Mechanism claims it to be inconsistent with the rule or regulation in question.

Article 8. Public services for the premises

1. The competent authorities shall secure, upon the request of the Registrar, or an official designated by him or her, on fair and equitable conditions, the public services needed by the Mechanism such as, but not limited to, postal, telephone, telegraphic services, any means of communication, electricity, water, gas, sewage, collection of waste, fire protection, local transportation and cleaning of public streets, including snow removal.

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2. In cases where the services referred to in paragraph 1 of this Article are made available to the Mechanism by the competent authorities, or where the prices thereof are under their control, the rates for such services shall not exceed the lowest comparable rates accorded to essential agencies and organs of the host State.

3. In case of any interruption or threatened interruption of any such services, the Mechanism shall be accorded the priority given to essential agencies and organs of the host State, and the host State shall take steps accordingly to ensure that the work of the Mechanism is not prejudiced.

4. Upon request of the competent authorities, the Registrar, or an official designated by him or her, shall make suitable arrangements to enable duly authorized representatives of the appropriate public services to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers on the premises under conditions which shall not unreasonably disturb the carrying out of the functions of the Mechanism.

5. Underground constructions may be undertaken by the competent authorities on the premises only after consultation with the Registrar, or an official designated by him or her, and under conditions which shall not disturb the carrying out of the functions of the Mechanism.

Article 9. Flags, emblems and markings

The Mechanism shall be entitled to display its and the United Nations' flags, emblems and markings on its premises and on vehicles and other means of transportation used for official purposes.

Article 10. Funds, assets and other property

1. The Mechanism, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Secretary-General has expressly waived its immunity. It is understood, however, that no waiver of immunity shall extend to any measure of execution.

2. Funds, assets and other property of the Mechanism, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

3. To the extent necessary to carry out the functions of the Mechanism, funds, assets and other property of the Mechanism, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, controls or moratoria of any nature.

Article 11. Inviolability of archives, documents and materials

1. The archives of the Mechanism, the ICTY and the ICTR, and all papers and documents in whatever form, and materials being sent to or from the Mechanism, held by the Mechanism or belonging to it, wherever located and by whomsoever held, shall be inviolable.

2. The termination or absence of such inviolability shall not affect protective measures that the Mechanism, the ICTY or the ICTR may have ordered or may order with regard to documents and materials made available to or used by the Mechanism.

Article 12. Facilities in respect of communications

1. The Mechanism shall enjoy in the territory of the host State, for the purposes of its official communications and correspondence, treatment not less favourable than that accorded by the host State to any international organization or diplomatic mission in the matter of priorities, rates and taxes applicable to mail and the various forms of communication and correspondence.

2. No censorship shall be applied to the official communications or correspondence of the Mechanism. Such immunity from censorship shall extend to printed matter, photographic and electronic data communications and other forms of communication as may be used by the Mechanism.

3. The Mechanism shall have the right to operate all appropriate means of communication, including electronic means of communication, and shall have the right to use codes or ciphers for its official communications and correspondence. The official communications and correspondence of the Mechanism shall be inviolable.

4. The Mechanism shall have the right to dispatch and receive correspondence and other materials or communications by courier or in sealed bags, which shall enjoy the same privileges, immunities and facilities as diplomatic couriers and bags.

5. The Mechanism shall have the right to operate radio, satellite and other telecommunication equipment on the United Nations-registered frequencies or frequencies allocated to it by the host State in accordance with its national procedures. The host State shall endeavour to allocate to the Mechanism, to the extent possible, frequencies for which it has applied.

6. For the fulfilment of its purposes, the Mechanism shall have the right to publish freely and without restrictions within the host State, in conformity with this Agreement.

Article 13. Freedom of financial assets from restrictions

1. Without being restricted by financial controls, regulations, notification requirements in respect of financial transactions, or moratoria of any kind, the Mechanism:

   a) may hold and use funds, gold or negotiable instruments of any kind and maintain and operate accounts in any currency and convert any currency held by it into any other currency;

   b) shall be free to transfer its funds, gold or currency from one country to another, or within the host State; and

   c) may raise funds in any manner which it deems desirable, except that with respect to the raising of funds within the host State, the Mechanism shall obtain the concurrence of the competent authorities.

2. The Mechanism shall enjoy treatment not less favourable than that accorded by the host State to any international organization or diplomatic mission in respect of rates of exchange for its financial transactions.

Article 14. Exemption from taxes and duties for the Mechanism and its property

1. Within the scope of its official functions, the Mechanism, its assets, income and other property shall be exempt from:

   a) all direct taxes, whether levied by national, provincial or local authorities, which include, *inter alia*, income tax and corporation tax;

   b) import and export taxes and duties (*belastingen bij invoer en uitvoer*);

   c) motor vehicle taxes (*motorrijtuigenbelasting*);

   d) taxes on passenger motor vehicles and motorcycles (*belasting van personenauto's en motorrijwielen*);

   e) value added taxes (*omzetbelasting*) paid on goods and services supplied on a recurring basis or involving considerable expenditure;

f) excise duties (*accijnzen*) included in the price of alcoholic beverages, tobacco products and hydrocarbons such as fuel oils and motor fuels;

g) real property transfer taxes (*overdrachtsbelasting*);

h) insurance taxes (*assurantiebelasting*);

i) energy taxes (*regulerende energiebelasting*);

j) taxes on mains water (*belasting op leidingwater*); and

k) any other taxes and duties of a substantially similar character as the taxes provided for in this paragraph, levied in the host State subsequent to the date of entry into force of this Agreement.

2. The exemptions provided for in paragraph 1, subparagraphs e) through k), of this Article may be granted by way of a refund. These exemptions shall be applied in accordance with the formal requirements of the host State. These requirements, however, shall not affect the general principles laid down in paragraph 1 of this Article.

3. Goods acquired or imported under the terms set out in paragraph 1 of this Article shall not be sold, let out, given away or otherwise disposed of in the host State, except in accordance with conditions agreed upon with the host State.

4. The Mechanism shall not claim exemption from taxes which are, in fact, no more than charges for public utility services provided at a fixed rate according to the amount of services rendered and which can be specifically identified, described and itemized.

Article 15. Exemption from import and export restrictions

The Mechanism shall be exempt from all restrictions on imports and exports in respect of articles imported or exported by the Mechanism for its official use and in respect of its publications.

PART III. PRIVILEGES, IMMUNITIES AND FACILITIES ACCORDED TO PERSONS UNDER THIS AGREEMENT

Article 16. Privileges, immunities and facilities of the President, judges, the Prosecutor and the Registrar

1. The President, the Prosecutor and the Registrar, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy the privileges, immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law, including the General Convention and the provisions of the Vienna Convention. Judges of the Mechanism, other than the President, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy these same privileges and immunities, exemptions and facilities when engaged on the business of the Mechanism. Such privileges, immunities, exemptions and facilities, *inter alia*, include:

   a) personal inviolability, including immunity from personal arrest or detention or any other restriction of their liberty and from seizure of their personal baggage;

   b) immunity from criminal, civil and administrative jurisdiction;

   c) inviolability of all papers and documents in whatever form and materials;

   d) immunity from national service obligations;

e) exemption from immigration restrictions and alien registration;

f) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Mechanism;

g) the same privileges in respect of currency and exchange facilities as are accorded to diplomatic envoys;

h) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys;

i) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of destination upon separation from the Mechanism;

j) for the purpose of their communications with the Mechanism, the right to receive and send papers in whatever form; and

k) the same repatriation facilities in time of international crisis as are accorded to diplomatic envoys under the Vienna Convention.

2. The President, the judges, the Prosecutor and the Registrar shall continue to be accorded immunity from legal process of every kind in respect of words which were spoken or written and all acts which were performed by them in their official capacity even after they have ceased to perform their functions for the Mechanism.

3. Where the incidence of any form of taxation depends upon residence, periods during which the President, the judges, the Prosecutor and the Registrar are present in the host State for the discharge of their functions shall not be considered as periods of residence.

4. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former Presidents, judges, Prosecutors or Registrars, and the members of their family forming part of the household.

5. Without prejudice to paragraph 3 of this Article, persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under Articles V, Section 18 and Article VII of the General Convention, together with the following modifications and supplementary provisions:

a) personal inviolability, including immunity from personal arrest or detention or any other restriction of their liberty;

b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism;

c) inviolability of all official papers and documents in whatever form and materials;

d) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Mechanism;

e) for the purpose of their communications with the Mechanism the right to receive and send papers in whatever form; and

f) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

6. Persons referred to in paragraph 5 of this Article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Mechanism.

Article 17. Privileges, immunities and facilities of staff of the Mechanism

1. Staff of the Mechanism shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall enjoy privileges and immunities accorded to officials of the United Nations under Articles V and VII of the General Convention, including as modified and supplemented below:

   a) immunity from personal arrest or detention or any other restriction of their liberty and from seizure of their personal baggage;

   b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism;

   c) inviolability of all official papers and documents in whatever form and materials;

   d) immunity from national service obligations;

   e) together with members of their family forming part of the household, exemption from immigration restrictions and alien registration;

   f) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Mechanism;

   g) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the host State;

   h) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the staff member concerned;

   i) together with members of their family forming part of the household, the same repatriation facilities in time of international crisis as are accorded to diplomatic envoys under the Vienna Convention; and

   j) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of destination upon separation from the Mechanism.

2. Additionally, staff of the Mechanism of P-5 level and above, and such additional categories of staff of the Mechanism as may be designated in agreement with the host State by the Registrar, or an official designated by him or her, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic envoys of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention.

3. Additionally, staff of the Mechanism of P-4 level and below, including general service staff, together with members of their family forming part of the household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties.

4. Where the incidence of any form of taxation depends upon residence, periods during which staff of the Mechanism are present in the host State for the discharge of their functions shall not be considered as periods of residence.

5. The host State shall not be obliged to exempt from income tax pensions or annuities paid to former staff of the Mechanism and the members of their family forming part of the household.

6. Without prejudice to paragraph 4 of this Article, persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy only the privileges, immunities and facilities under Article V, Section 18, and Article VII of the General Convention, including as modified and supplemented below:

   a) immunity from personal arrest or detention or any other restriction of their liberty;

   b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism;

   c) inviolability of all official papers and documents in whatever form and materials;

   d) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Mechanism; and

   e) the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

7. Persons referred to in paragraph 6 under this Article shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Mechanism.

Article 18. Experts on mission for the Mechanism

1. Experts on mission for the Mechanism shall enjoy the privileges and immunities, exemptions and facilities as are necessary for the independent performance of their functions for the Mechanism, and in particular, shall enjoy the privileges and immunities, exemptions and facilities under Articles VI and VII of the General Convention.

2. Experts on mission for the Mechanism shall be provided by the Registrar with a document certifying that they are performing functions for the Mechanism and specifying a time period for which their functions will last. This certificate shall be withdrawn prior to its expiry if the expert on mission for the Mechanism is no longer performing functions for the Mechanism, or if the presence of the expert on mission for the Mechanism at the seat of the Mechanism is no longer required.

Article 19. Personnel recruited locally by the Mechanism and not otherwise covered by this Agreement, including such personnel assigned to hourly rates

1. Personnel recruited locally by the Mechanism and not otherwise covered by this Agreement, including such personnel assigned to hourly rates, shall be accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Mechanism. Such immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism. During their employment, they shall also be accorded such other facilities as may be necessary for the independent performance of their functions for the Mechanism.

2. The terms and conditions of the employment of personnel recruited locally and assigned to hourly rates by the Mechanism shall be in accordance with the relevant United Nations resolutions, decisions, regulations, rules and policies.

Article 20. Employment of family members of officials of the Mechanism

1. Members of their family forming part of the household of officials of the Mechanism shall be authorized to engage in gainful employment in the host State for the duration of the term of office of the official of the Mechanism concerned.

2. Members of their family forming part of the household of officials of the Mechanism who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

3. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the Mechanism shall seek to ensure that the official of the Mechanism of whose family the person concerned is a member, meets their private legal obligations that arise in this connection, and where necessary, the Secretary-General shall give prompt attention to a request for a waiver in this regard.

4. The employment referred to in paragraph 1 of this Article shall be in accordance with the legislation of the host State, including fiscal and social security legislation.

Article 21. Interns

1. Within eight (8) days after the commencement of an internship in the host State, the Mechanism shall request the Ministry of Foreign Affairs to register any intern in accordance with paragraph 2 of this Article.

2. The Ministry of Foreign Affairs shall register interns for a maximum period of one (1) year provided that the Mechanism supplies the Ministry of Foreign Affairs with a declaration signed by them, accompanied by adequate proof, to the effect that:

   a) the intern entered the host State in accordance with the applicable immigration procedures;

   b) the intern has sufficient financial means for living expenses and for repatriation, as well as sufficient medical insurance (including coverage of costs of hospitalization for at least the duration of the internship plus one month) and third-party liability insurance, and shall not be a charge on the public purse in the host State;

   c) the intern shall not engage in gainful employment in the host State during his or her internship other than as an intern for the Mechanism, unless he or she is otherwise authorized to work in the host State;

   d) the intern shall not bring any family members to reside with him or her in the host State other than in accordance with the applicable immigration procedures; and

   e) the intern shall leave the host State within fifteen (15) days after the end of the internship, unless he or she is otherwise authorized to stay in the host State.

3. Upon registration of the intern in accordance with paragraph 2 of this Article, the Ministry of Foreign Affairs shall issue an identity card to the intern.

4. The Mechanism shall not incur liability for damage resulting from non-fulfilment of the conditions of the declaration referred to in paragraph 2 of this Article by interns registered in accordance with that paragraph.

5. Interns shall not enjoy privileges, immunities and facilities, except:

   a) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity for the Mechanism, which immunity shall continue to be

accorded even after they have ceased to perform their functions for the Mechanism for activities carried out on its behalf; and

b) inviolability of all official papers and documents in whatever form and materials.

6. The Mechanism shall notify the Ministry of Foreign Affairs of the final departure of the intern from the host State within eight (8) days after such departure, and shall at the same time return the intern's identity card.

7. In exceptional circumstances, the maximum period of one (1) year mentioned in paragraph 2 of this Article may be extended once by a maximum period of one (1) year.

Article 22. Defence counsel and persons assisting defence counsel

1. Defence counsel, when holding a certificate that they have been admitted as counsel by the Mechanism and when performing their official functions, and after prior notification by the Mechanism to the host State of their mission, arrival and final departure, shall enjoy the same privileges, immunities and facilities as are accorded to experts on mission for the United Nations under Article VI, Section 22, paragraphs (a)-(c) of the General Convention, including as modified and supplemented below:

   a) immunity from personal arrest or detention or any other restriction of their liberty and from seizure of their personal baggage;

   b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism;

   c) inviolability of all official papers and documents in whatever form and materials;

   d) together with members of their family forming part of the household, exemption from immigration restrictions and alien registration;

   e) for the purpose of their communications in pursuance of their functions as counsel, the right to receive and send papers in whatever form;

   f) exemption from inspection of personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the counsel concerned;

   g) the same privileges in respect of currency and exchange facilities as are accorded to representatives of foreign governments on temporary official missions; and

   h) together with members of their family forming part of the household, the same repatriation facilities in time of international crisis as are accorded to diplomatic envoys under the Vienna Convention.

2. Upon their appointment in accordance with the Statute and the Rules of Procedure and Evidence, defence counsel shall be provided with a certificate by the Registrar for the period required for the performance of their functions. This certificate shall be withdrawn if the power or mandate is terminated prior to the expiry of the certificate.

3. Upon receipt of the certificate in accordance with paragraph 2 of this Article, the Ministry of Foreign Affairs shall issue an identity card to defence counsel, should they be required to stay in the host State for a period longer than 90 days and hold a non-European Union nationality.

4. Where the incidence of any form of taxation depends upon residence, periods during which defence counsel are present in the host State for the discharge of their functions shall not be considered as periods of residence.

5. Defence counsel who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions before the Mechanism:

   a) immunity from personal arrest or detention or any other restriction of their liberty;

   b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity, which immunity shall continue to be accorded even after they have ceased to perform their functions for the Mechanism;

   c) inviolability of all official papers and documents in whatever form and materials; and

   d) for the purpose of their communications in pursuance of their functions as defence counsel, the right to receive and send papers in whatever form.

6. Defence counsel shall not be subjected by the host State to any measure which may affect the free and independent performance of their functions before the Mechanism.

7. This Article shall be without prejudice to such disciplinary rules as may be applicable to defence counsel.

8. At the final departure of defence counsel or when defence counsel has ceased to perform his or her functions for the Mechanism, the identity card referred to in paragraph 3 of this Article shall be promptly returned by the Mechanism to the Ministry of Foreign Affairs.

9. The provisions of this Article shall apply, *mutatis mutandis*, to persons assisting defence counsel, recognised by the Registrar as such, in accordance with the relevant rules and procedures.

Article 23. Witnesses

1. Without prejudice to the obligation of the host State to comply with requests for assistance made or orders issued by the Mechanism pursuant to Article 28 of the Statute, witnesses shall be accorded the following privileges, immunities and facilities as are necessary for the proper functioning of the Mechanism, subject to the production of the document referred to in paragraph 2 of this Article:

   a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

   b) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;

   c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance or testimony, which immunity shall continue to be accorded even after their appearance or testimony before the Mechanism;

   d) inviolability of all papers and documents in whatever form and materials relating to their appearance or testimony;

   e) exemption from immigration restrictions and alien registration when they travel for purposes of their appearance or testimony;

   f) for the purpose of their communications with the Mechanism and with defence counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form; and

   g) the same repatriation facilities in time of international crisis as are accorded to diplomatic envoys under the Vienna Convention.

2. Witnesses shall be provided by the Registrar with a document certifying that their appearance is required by the Mechanism and specifying a time period during which such appearance is necessary. This certificate shall be withdrawn prior to its expiry if the witness' appearance before the Mechanism or his or her presence at the seat of the Mechanism is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this Article, except for that referred to in paragraph 1(c) of this Article, shall cease to apply after fifteen (15) consecutive days following the date on which the presence of the witness concerned is no longer required by the Mechanism, provided that such witness had an opportunity to leave the host State during that period.

4. Witnesses who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for their appearance or testimony before the Mechanism:

   a) immunity from personal arrest or detention or any other restriction of their liberty;

   b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their appearance or testimony, which immunity shall continue to be accorded even after their appearance or testimony before the Mechanism;

   c) inviolability of all official papers and documents in whatever form and materials;

   d) for the purpose of their communications with the Mechanism and with defence counsel in connection with their appearance or testimony, the right to receive and send papers in whatever form.

5. Witnesses shall not be subjected by the host State to any measure which may affect their appearance or testimony before the Mechanism.

6. The Registrar shall take all necessary measures to arrange the relocation without delay to third States of witnesses who for security reasons cannot return to their home countries or their countries of permanent residence after appearing or testifying before the Mechanism.

Article 24. Other persons required to be present at the seat of the Mechanism

1. Other persons required to be present at the seat of the Mechanism shall, to the extent necessary for the proper functioning of the Mechanism, be accorded the following privileges, immunities and facilities, subject to the production of the document referred to in paragraph 2 of this Article:

   a) immunity from personal arrest or detention or any other restriction of their liberty in respect of acts or convictions prior to their entry into the territory of the host State;

   b) immunity from seizure of their personal baggage unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the host State;

   c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism, which immunity shall continue to be accorded even after they are no longer present at the seat of the Mechanism;

   d) inviolability of all official papers and documents in whatever form and materials; and

   e) exemption from immigration restrictions and alien registration when they travel to and from the Mechanism for purposes of their presence at the seat of the Mechanism.

2. Persons referred to in this Article shall be provided by the Registrar with a document certifying that their presence is required at the seat of the Mechanism and specifying a time period during

which such presence is necessary. Such document shall be withdrawn prior to its expiry if their presence at the seat of the Mechanism is no longer required.

3. The privileges, immunities and facilities referred to in paragraph 1 of this Article, except for that referred to in paragraph 1(c) of this Article, shall cease to apply after fifteen (15) consecutive days following the date on which the presence of the person concerned is no longer required by the Mechanism, provided that the person had an opportunity to leave the host State during that period.

4. Persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy no privileges, immunities and facilities, except, as is necessary for the proper functioning of the Mechanism, immunity from legal process in respect of words spoken or written and all acts performed by them in the course of their presence at the seat of the Mechanism. Such immunity shall continue to be accorded even after their presence at the seat of the Mechanism is no longer required.

5. Persons referred to in this Article shall not be subjected by the host State to any measure which may affect their presence at the seat of the Mechanism.

PART IV. WAIVER OF PRIVILEGES, IMMUNITIES, AND FACILITIES

Article 25. Waiver of privileges, immunities and facilities

1. The privileges, immunities and facilities provided for in Articles 16, 17, 18, 19, 21, 22, 23, and 24 of this Agreement are granted in the interests of the Mechanism and not for the personal benefit of the individuals themselves.

2. The Secretary-General shall have the right and duty to waive the immunity granted under this Agreement of any person in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Mechanism.

PART V. COOPERATION BETWEEN THE MECHANISM AND THE HOST STATE

SECTION 1: GENERAL

Article 26. General cooperation between the Mechanism and the host State

1. Whenever this Agreement imposes obligations on the competent authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government of the host State.

2. The host State shall promptly inform the Mechanism of the office designated to serve as the official contact point and to be primarily responsible for all matters in relation to this Agreement, as well as of any subsequent changes in this regard.

3. The Registrar, or an official designated by him or her, shall serve as the official contact point for the host State and shall be primarily responsible for all matters in relation to this Agreement. The host State shall be informed promptly about this designation and of any subsequent changes in this regard.

Article 27. Cooperation with the competent authorities

1. The Mechanism shall cooperate at all times with the competent authorities to facilitate the proper administration of justice and the enforcement of the laws of the host State, to secure the

observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The Mechanism and the host State shall cooperate on security matters, taking into account the public order and national security interests of the host State.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State and not to interfere in the internal affairs of the host State.

4. The Mechanism shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The Mechanism shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

Article 28. Notification and Identification Cards

1. The Registrar, or an official designated by him or her, shall promptly notify the host State of:

   a) the appointment of officials of the Mechanism, the date of their arrival or commencement of their functions and their final date of departure or termination of their functions with the Mechanism;

   b) the arrival and final departure date of members of their family forming part of the household of the persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that a person has ceased to form part of the household; and

   c) the arrival and final departure date of private or domestic servants of persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that they are leaving the employ of such persons.

2. The host State shall issue to the officials of the Mechanism and to members of their family forming part of the household and to their private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to the competent authorities.

3. At the final departure of the persons referred to in paragraph 2 of this Article or when these persons have ceased to perform their functions for the Mechanism, the identity card referred to in paragraph 2 of this Article shall be promptly returned by the Mechanism to the Ministry of Foreign Affairs.

Article 29. Social security regime

The social security systems of the Mechanism offer coverage comparable to the coverage under the legislation of the host State. Accordingly, officials of the Mechanism to whom the aforementioned scheme applies shall be exempt from the social security provisions of the host State. Consequently, officials of the Mechanism shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to them, unless they take up gainful activity in the host State.

SECTION 2: VISAS, PERMITS AND OTHER DOCUMENTS

Article 30. Visas for officials of the Mechanism, defence counsel and persons assisting defence counsel and experts on mission for the Mechanism

1. Officials of the Mechanism, defence counsel and persons assisting defence counsel and experts on mission for the Mechanism, as notified as such by the Registrar, or an official designated by him

or her to the host State, shall have the right of unimpeded entry into, exit from and movement within the host State, including unimpeded access to the premises of the Mechanism.

2. Visas, where required, shall be granted free of charge and as promptly as possible.

3. Applications for visas from members of their family forming part of the household of the persons referred to in paragraph 1 of this Article, where required, shall be processed by the host State as promptly as possible and granted free of charge.

Article 31. Visas for witnesses, interns, and other persons required to be present at the seat of the Mechanism

1. All persons referred to in Articles 21, 23, and 24 of this Agreement, as notified as such by the Registrar, or an official designated by him or her to the host State, shall have the right of unimpeded entry into, exit from and, subject to paragraph 3 of this Article, movement within the host State, as appropriate and for the purposes of the Mechanism.

2. Visas, where required, shall be granted free of charge and as promptly as possible. The same facilities shall be accorded to persons accompanying witnesses, who have been notified as such by the Registrar, or an official designated by him or her to the host State.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned. Before applying paragraph 3 of this Article, the host State will seek observations from the Mechanism.

4. The host State shall, as necessary, facilitate the entry into, exit from and movement within the host State for persons suspected or accused of contempt of court against whom no arrest warrant is in force at the time of entry of the individual into the host State, provided that any public order or security concerns of the host State are taken into account.

Article 32. Visas for visitors of persons detained by the Mechanism

1. The host State shall make adequate arrangements by which visas for visitors of persons detained by the Mechanism are processed promptly. Visas for visitors who are family members of a person detained by the Mechanism shall be processed promptly and may be issued, where appropriate, free of charge or for a reduced fee.

2. Visas for the visitors referred to in paragraph 1 of this Article may be subject to territorial limitations. Visas may be refused in the event that:

   a) the visitors referred to in paragraph 1 of this Article cannot produce documents justifying the purpose and conditions of the intended stay and demonstrating that they have sufficient means of subsistence for the period of the intended stay and sufficient means for the return to the country of origin or transfer to a third State into which they are certain to be admitted, or that they are in a position to acquire such means lawfully;

   b) an alert has been issued against them for the purpose of refusing entry; or

   c) they must be considered a threat to public order, national security or the international relations of any of the Contracting Parties to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders.

3. The host State may attach such conditions or restrictions to the visa as may be necessary to prevent violations of its public order or to protect the safety of the person concerned.

4. Before applying paragraphs 2 or 3 of this Article, the host State will seek observations from the Mechanism.

Article 33. Laissez-passer and United Nations Certificate

1. The host State shall recognize and accept the United Nations laissez-passer as a valid travel document. Where applicable, the host State further agrees to issue any required visas in the United Nations laissez-passer.

2. The host State shall recognize and accept in accordance with the provisions of Section 26 of the General Convention the United Nations certificate issued to persons travelling on the business of the Mechanism.

3. Holders of a laissez-passer or a certificate indicating that they are travelling on the business of the Mechanism shall be granted facilities for speedy travel.

Article 34. Driving licence

1. During their period of employment with the Mechanism, officials of the Mechanism, as well as members of their family forming part of the household and their private servants, shall be allowed to obtain from the host State a driving licence on presentation of their valid foreign driving licence or to continue to drive using their own valid foreign driving licence, provided they are in possession of an identity card issued by the host State in accordance with Article 28 of this Agreement.

2. During the period of their assignment, any person issued an identity card by the host State shall be allowed to continue to drive using their own valid foreign driving licence.

SECTION 3: SECURITY, OPERATIONAL ASSISTANCE

Article 35. Security, safety and protection of persons referred to in this Agreement

1. Without prejudice to the privileges, immunities and facilities granted under this Agreement, the competent authorities shall take effective and adequate action which may be required to ensure the security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Mechanism, free from interference of any kind.

2. The Mechanism shall cooperate with the competent authorities with a view to facilitating the observance by all persons referred to in this Agreement of the directives necessary for their security and safety, as given to them by the competent authorities.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons referred to in this Agreement to observe the directives necessary for their security and safety, as given to them by the competent authorities.

Article 36. Transport of persons detained by the Mechanism

1. The transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence from the point of arrival in the host State to the premises of the Mechanism shall, at the request of the Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

2. The transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence from the premises of the Mechanism to the point of departure from the host State shall, at the request of the Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

3. Any transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Evidence in the host State outside the premises of the Mechanism shall, at the request of the

Mechanism, be carried out by the competent authorities of the host State in consultation with the Mechanism.

4. The Mechanism shall give reasonable notice to the competent authorities of the host State in case of a request for transport of persons referred to in this Article. Whenever possible, 72 hours advance notice will be given.

5. Where the host State receives a request under this Article and identifies problems in relation to the execution of the request, it shall consult with the Mechanism, without delay, in order to resolve the matter. Such problems may include, *inter alia*:

   a) insufficient time and/or information to execute the request;

   b) the impossibility, despite best efforts, to make adequate security arrangements for the transport of the person; or

   c) the existence of a threat to public order and security in the host State.

6. A person detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence shall be transported directly and without impediment to the destination specified in paragraphs 1 and 2 of this Article or to any other destination as requested by the Mechanism under paragraph 3 of this Article.

7. The Mechanism and the host State shall, as appropriate, make practical arrangements for the transport of persons detained by the Mechanism pursuant to the Statute and the Rules of Procedure and Evidence in accordance with this Article.

Article 37. Cooperation in detention matters

1. The host State shall cooperate with the Mechanism to facilitate the detention of persons and to allow the Mechanism to perform its functions within its detention centre.

2. Where the presence of a person in custody is required for the purpose of giving testimony or other assistance to the Mechanism and where, for security reasons, such a person cannot be maintained in custody in the detention centre of the Mechanism, the Mechanism and the host State shall consult and, where necessary, make arrangements to transport the person to a prison facility or other place made available by the host State.

Article 38. Provisional release

1. The host State shall facilitate the transfer of persons granted provisional release into a State other than the host State.

2. The host State shall facilitate the re-entry into the host State of persons granted provisional release, and their short-term stay in the host State, for any purpose related to proceedings before the Mechanism.

3. The Mechanism and the host State shall make practical arrangements as to the implementation of this Article.

Article 39. Release

1. Where a person is released from the custody of the Mechanism following the person's acquittal at trial or on appeal, or for any other reason, the Mechanism shall, as soon as possible, make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her or to a State which has requested his or her extradition with the consent of the original surrendering State.

2. The provisions of Article 36 of this Agreement shall apply, *mutatis mutandis*, to the transport of persons referred to in this Article within the host State.

3. A person referred to in this Article shall not remain on the territory of the host State except with the latter's consent.

Article 40. Enforcement of sentences

Imprisonment shall be served in a State designated by the Mechanism from among those States with which the United Nations has agreements for this purpose in accordance with Article 25 of the Statute. The Mechanism shall begin the process of designating a State of enforcement as soon as possible.

Article 41. Limitation to the exercise of jurisdiction by the host State

1. The host State shall not exercise its jurisdiction or proceed with a request for extradition from another State with regard to persons who appear before and who are prosecuted by the Mechanism for any acts, omissions or convictions prior to their entry into the territory of the host State except as may be provided for in the Rules of Procedure and Evidence.

2. The immunity provided for in this Article shall cease when the person, having been acquitted, released or is otherwise no longer required by the Mechanism and having had for a period of fifteen (15) consecutive days from that date an opportunity of leaving, has nevertheless remained in the territory of the host State, or having left it, has returned.

PART VI. FINAL PROVISIONS

Article 42. Supplementary arrangements and agreements

1. The provisions of this Agreement shall be supplemented at the time of signature by an exchange of letters which confirms the joint understandings of the Agreement by the Parties.

2. The Mechanism and the host State may, for the purpose of implementing this Agreement or of addressing matters not foreseen in this Agreement, make supplementary arrangements and agreements as appropriate.

Article 43. Settlement of disputes with third parties

The Mechanism shall make provisions for appropriate modes of settlement of:

a) disputes arising out of contracts and other disputes of a private law character to which the Mechanism is a party; and

b) disputes involving any person referred to in this Agreement who, by reason of his or her official position or function in connection with the Mechanism, enjoys immunity, if such immunity has not been waived by the Secretary-General.

Article 44. Settlement of differences on the interpretation or application of this Agreement or supplementary arrangements or agreements

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Parties shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this Article within three months following a written request by one of the Parties to the difference, it shall, at the request of either

Party, be referred to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If, within thirty days of the request for arbitration, a Party has not appointed an arbitrator, or if, within fifteen (15) days of the appointment of two arbitrators, the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint the arbitrator referred to. The Tribunal shall determine its own procedures, provided that any two arbitrators shall constitute a quorum for all purposes, and all decisions shall require the agreement of any two arbitrators. The expenses of the Tribunal shall be borne by the Parties as assessed by the Tribunal. The arbitral award shall contain a statement of the reasons on which it is based and shall be final and binding on the Parties.

Article 45. Application

This Agreement shall apply to the part of the Kingdom of the Netherlands in Europe only.

Article 46. Amendments and termination

1. This Agreement may be amended by mutual consent of the Parties.

2. This Agreement shall be reviewed at the request of either Party to consider amendments in light of privileges, immunities, facilities and treatment accorded by the host State to any comparable international organization or tribunal more favourable than comparable privileges, immunities, facilities and treatment in this Agreement.

3. This Agreement shall cease to be in force by mutual consent of the Parties, if the seat of the Mechanism is removed from the territory of the host State or if the Mechanism is dissolved, except for such provisions as may be applicable in connection with the orderly termination of the operations of the Mechanism at its seat in the host State and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or all acts performed in an official capacity under this Agreement.

Article 47. Interpretation of agreements

The provisions of this Agreement shall be complementary to the provisions of the General Convention and the Vienna Convention, the latter Convention only insofar as it is relevant for the diplomatic privileges, immunities and facilities accorded to the appropriate categories of persons referred to in this Agreement. Insofar as any provision of this Agreement and any provisions of the General Convention and the Vienna Convention relate to the same subject matter, each of these provisions shall be applicable and neither shall narrow the effect of the other.

Article 48. Entry into force

1. This Agreement shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

2. Upon entry into force of this Agreement, the Agreement Concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 signed on 29 July 1994 and the Agreement Regarding the Applicability of the Headquarters Agreement of the International Tribunal for the Former Yugoslavia to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands, 22 and 24 April 1996, and any respective supplementary agreements the contents of which have been addressed by this Agreement, shall terminate and this Agreement shall apply *mutatis mutandis* to the ICTY and ICTR.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at [place] on [date] in duplicate, in the English language.

For the United Nations,

[NAME]

For the Kingdom of the Netherlands,

[NAME]

PERMANENT REPRESENTATION OF THE KINGDOM OF THE NETHERLANDS TO THE UNITED NATIONS
The Ambassador
New York, [] 2014
NYV/2014/[]

On the occasion of the signing of the Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals, I would like to refer to the discussions held between representatives of the United Nations and the Kingdom of the Netherlands concerning the interpretation of certain provisions of the Agreement.

I have the honor to confirm on behalf of the Government of the Netherlands the following understandings.

Without prejudice to the rules and regulations of the Mechanism, it is the understanding of the Parties that the following persons will, for the purposes of this Agreement, and this Agreement only, be considered as members of their family forming part of the household of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel:

a) spouses or registered partners of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel;

b) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel who are under the age of 18;

c) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel, aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this household, and that they are unmarried, financially dependent on the judge, Prosecutor, Registrar, member of the staff of the Mechanism or defence counsel concerned and are attending an educational institution in the host State;

d) children of the judges, the Prosecutor, the Registrar, staff of the Mechanism and defence counsel aged 18 or over, but not older than 23, will also be recognized as members of their family forming part of the household if they are not studying as long as they are unmarried and financially dependent on the judge, Prosecutor, Registrar or member of the staff of the Mechanism or defence counsel concerned;

e) other persons who, in exceptional cases or for humanitarian reasons, the Mechanism and the host State decide to treat as members of their family forming part of the household.

With respect to Article 16, paragraph 1, it is the understanding of the Parties that with respect to judges of the Mechanism, "when engaged on the business of the Mechanism" includes not only when a judge is activated for duty from a roster, but also includes when a judge performs functions for the Mechanism, such as attending a plenary meeting, that may not require activation of the judge from the roster. The United Nations will determine when a judge is "engaged on the business of the Mechanism".

With respect to Article 16, paragraph 5, it is the understanding of the Parties that nothing in this provision precludes the Mechanism from exercising its rights under Article 46, paragraph 2.

With respect to Article 21, subparagraph 2(d), it is the understanding of the Parties that this prohibition does not apply to fellows who are sponsored by other international organizations or states and who perform functions as staff members though they are not formally recruited as such, so long as they are at the Mechanism for a period longer than six (6) months.

With respect to Article 23, paragraph 6, it is the understanding of the Parties that in regard to relocation of witnesses who for security reasons cannot return to their home countries or their countries of permanent residence after appearing or testifying before the Mechanism, the Mechanism relies on the cooperation by third States.

With respect to Article 28, paragraph 2, it is furthermore the understanding of the Parties that in exceptional cases and on an ad-hoc basis, the host State may, by the reasoned request of the Mechanism, issue an identity card to a person required to be at the seat of the Mechanism for an extended period of time, but who is not entitled to an identity card under this Agreement.

With respect to Article 46, paragraph 2, it is the understanding of the Parties that the host State shall provide persuasive reasons for not according to the Mechanism the same treatment as accorded to other comparable international organizations or tribunals when that treatment is considered by the Mechanism to be more favourable.

I should be grateful if you could confirm on behalf of the United Nations that the above is also the understanding of the United Nations.

Please accept, Excellency, the assurances of my highest consideration.
[The Ambassador]

H.E. Mr. ***Miguel de Serpa Soares***
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REFERENCE:

[ ] Month 201[ ]

Excellency,

I have the honour to acknowledge receipt of your letter of [ ] Month 201[], in which you set out your Government's understandings regarding the interpretation of certain provisions of the Agreement between the United Nations and the Kingdom of the Netherlands concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals.

In accordance with your request, I wish to confirm, on behalf of the United Nations, that the understandings reflected in your letter conform with those of the United Nations.

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

Yours sincerely,

Miguel de Serpa Soares
Under-Secretary-General for Legal Affairs
and United Nations Legal Counsel

[His Excellency
Mr. Karel Jan Gustaaf van Oosterom
Permanent Representative of the Kingdom of the Netherlands
to the United Nations
New York]