

United Nations
Environment
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UNEP/IG.23/7
29 December 1980

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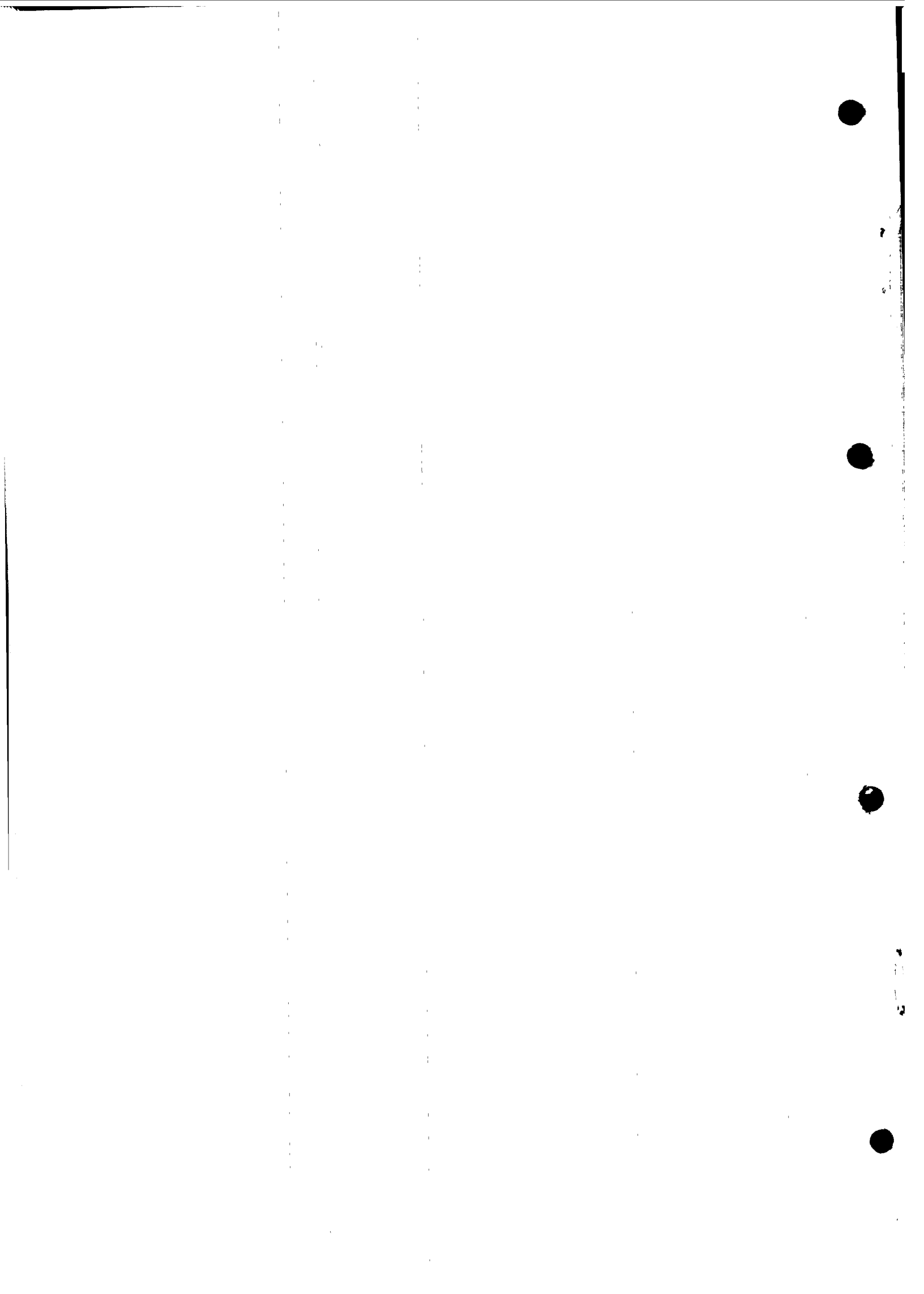
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to the Convention for the Protection of the
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and its related protocols and
Intergovernmental Review Meeting of
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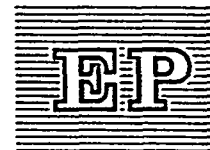
Cannes, 2 - 7 March 1981

DRAFT HEADQUARTERS AGREEMENT

FOR THE ESTABLISHMENT OF THE

MEDITERRANEAN CO-ORDINATING UNIT IN A MEDITERRANEAN COUNTRY





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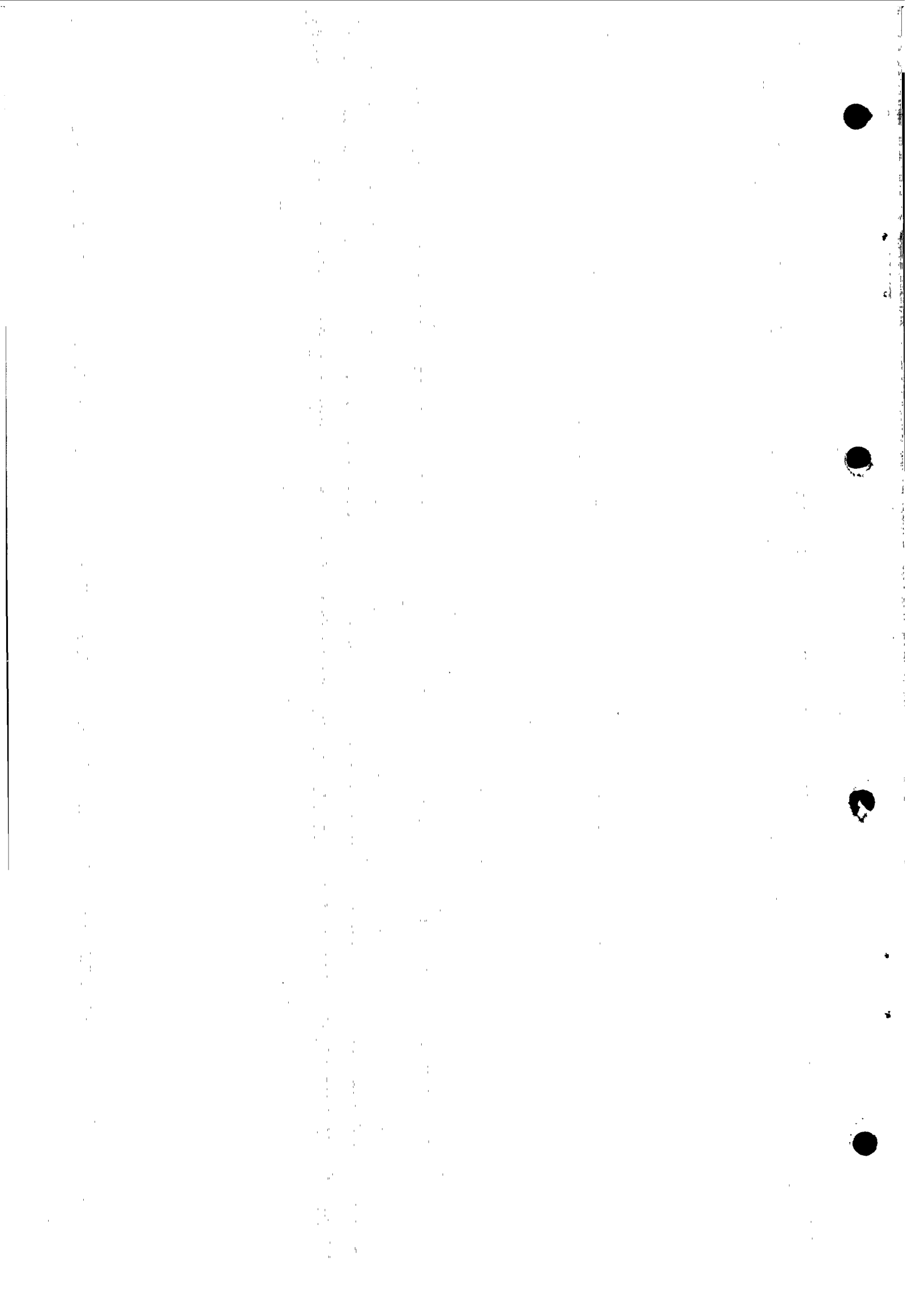
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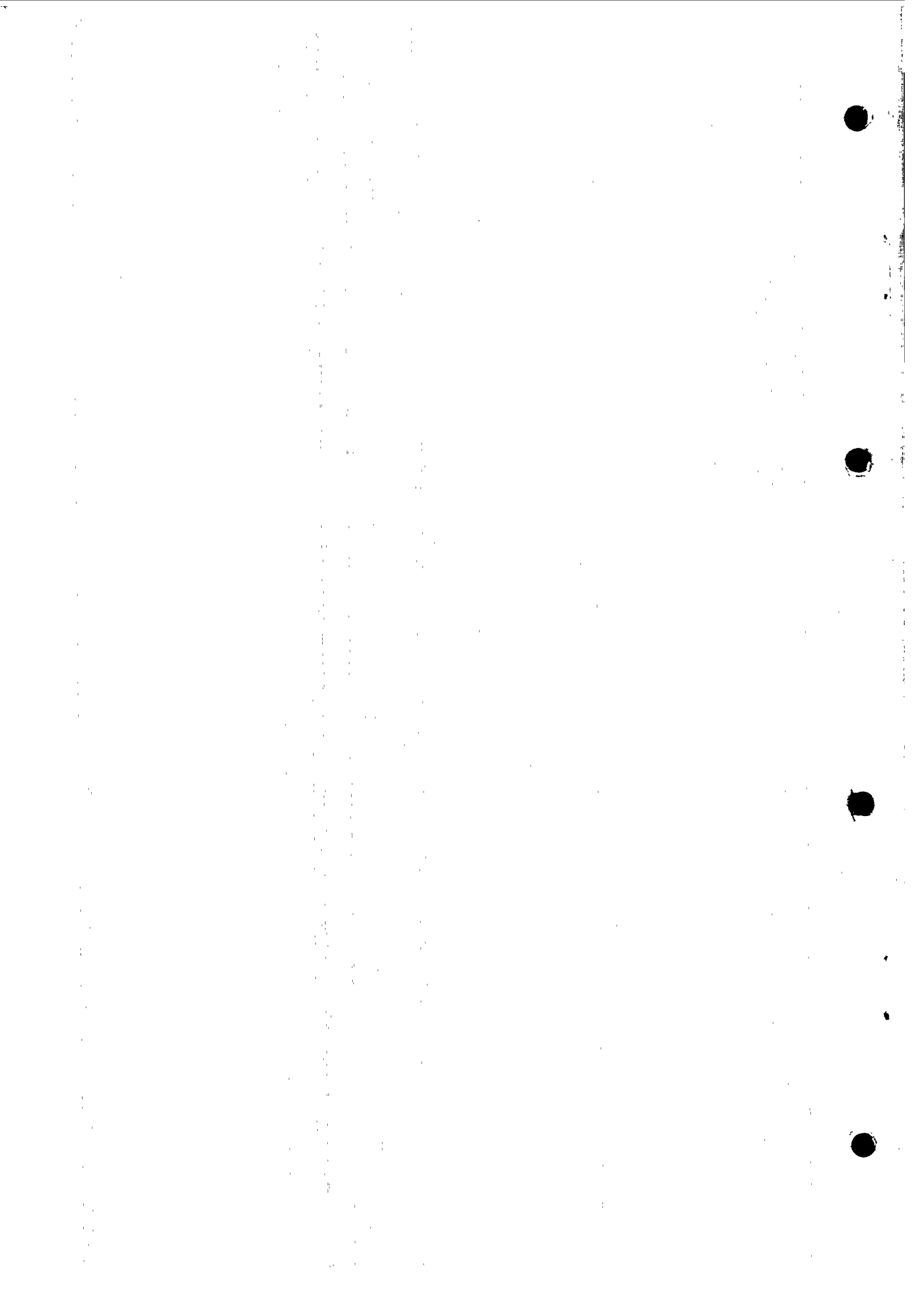
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DRAFT HEADQUARTERS AGREEMENT
FOR THE ESTABLISHMENT OF THE
MEDITERRANEAN CO-ORDINATING UNIT IN A MEDITERRANEAN COUNTRY

GE.81-00214



1. At the Intergovernmental Review Meeting in Barcelona the secretariat indicated that it would prepare a study on the location of the Co-ordinating Unit. (UNEP/IG.18/7, paragraph 37). The present document deals with the legal status to be agreed upon.
2. The secretariat, in consultation with the legal office of the United Nations, prepared a draft headquarters agreement to regulate the questions arising as a result of the establishment of the headquarters of the Co-ordinating Unit for the Mediterranean Action Plan at a location outside the seat of a United Nations office. The draft was based on conditions applicable to UNEP headquarters in Nairobi and on those applicable to the Co-ordinating Unit in Geneva, suitably modified.
3. The text of this draft agreement was submitted for comment to the Governments of Greece, Lebanon and Spain. The text of the "model" agreement is reproduced in annex I.
4. A similar text, tripartite in nature, was prepared and submitted to the Governments of Monaco and France, in order to cover certain responsibilities of France should the Unit be located in Monaco.
5. Comments on the above texts were received from the Governments of France, Greece and Monaco. Their replies are reproduced in annex II, A, B, and C.
6. No reply was received from the Government of Lebanon.
7. The draft agreement was discussed between the Spanish authorities and the UNEP legal officer in Madrid and their comments are summarized in annex II, D. It is regretted that time did not permit carrying out, as planned, similar consultations with the other Governments.
8. The secretariat wishes to stress the need to conclude a headquarters agreement between the United Nations organization and the host country prior to the establishment of the Unit in its permanent location, in order to ensure the effective implementation of the Mediterranean Action Plan.



MODEL UNEP REGIONAL OFFICE AGREEMENT
AGREEMENT BETWEEN THE UNITED NATIONS AND

.....
REGARDING THE HEADQUARTERS OF THE
MEDITERRANEAN CO-ORDINATING UNIT

The United Nations and _____

Considering that 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 _____ is a party, is ipso facto applicable to the United Nations Environment Programme;

Considering that it is desirable to conclude an agreement, complementary to the Convention on the Privileges and Immunities of the United Nations, to regulate questions not envisaged in that Convention arising as a result of the establishment of the headquarters of the Co-ordinating Unit for the Mediterranean Action Plan at _____;

Have agreed as follows:

Article I
DEFINITIONS
SECTION I

In this Agreement,

(a) The expression "UNEP" means the institutional and financial arrangements for the United Nations Environment Programme established by the General Assembly of the United Nations in resolution 2997 (XXVII) of 15 December 1972, and such other institutional and financial arrangements as may from time to time be made for the United Nations Environment Programme. The United Nations Environment Programme shall, in particular, in accordance with resolution 2997 (XXVII), include the following:

- (i) the Governing Council of the United Nations Environment Programme;
- (ii) the Executive Director of the United Nations Environment Programme;
- (iii) the Environment Secretariat; and
- (iv) the Environment Fund;

(b) The expression "the Unit" means the headquarters of the Co-ordinating Unit for the Mediterranean Action Plan;

(c) The expression "Executive Director" means the Executive Director of UNEP or any officer designated to act on his behalf;

(d) The expression "Director" means the Director of the Unit;

(e) The expression "officials of the Unit" means the officials of the Environment Secretariat forming part of the Unit, namely the Director and all members of the staff of the Unit except those who are locally recruited and assigned to hourly rates;

(f) The expression "officials of the Environment Secretariat" means the Executive Director and all members of the staff of UNEP, including the officials of the Unit, except those who are locally recruited and assigned to hourly rates;

(g) The expression "the Government" means the Government of _____;

(h) The expression "appropriate _____ authorities" means such government, municipal or other authorities in _____ as may be appropriate in the context and in accordance with the laws and customs applicable in _____;

(i) The expression "laws of _____" includes:

- (i) the Constitution of _____; and
- (ii) legislative acts, regulations and orders issued by or under authority of the Government or appropriate _____ authorities;

- (j) The expression "headquarters seat" means:
- (i) the area assigned for the headquarters of the Unit, with the building or buildings upon it, as may from time to time be defined in supplemental agreements referred to in section 3 of article II hereof; and
 - (ii) any other land or buildings which may from time to time be included, temporarily or permanently, therein in accordance with this Agreement or by supplemental agreement with the Government;

(k) The expression "Member State" means a State which is a Member of the United Nations, or a member of one of the specialized agencies, or a member of the International Atomic Energy Agency, or any other State designated by the General Assembly as eligible to participate in UNEP;

(l) The expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations on 13 February 1946.

Article II
THE HEADQUARTERS SEAT
SECTION 2

(a) The permanent headquarters of the Unit shall be in the headquarters seat, and shall not be removed therefrom unless the United Nations should so decide. Any transfer of the headquarters temporarily to another place shall not constitute a removal of the permanent headquarters unless there is an express decision by the United Nations to that effect.

(b) Any location in or outside of _____ which may be used with the concurrence of the Government for meetings convened by the Unit shall be temporarily included in the headquarters seat.

(c) The appropriate _____ authorities shall take whatever action may be necessary to ensure that the Unit shall not be dispossessed of all or any part of the headquarters seat without the express consent of the United Nations.

SECTION 3

The Government grants to the United Nations, and the United Nations accepts from the Government, the permanent use and occupation of a headquarters seat for the Unit as may from time to time be defined in supplemental agreements to be concluded between the United Nations and the Government.

SECTION 4

(a) The United Nations shall for official purposes have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board.

(b) The Government shall, upon request, grant to the Unit for official purposes appropriate radio and other telecommunications facilities in conformity with technical arrangements to be made with the International Telecommunications Union.

SECTION 5

The Unit may establish and operate research, documentation and other technical facilities. These facilities shall be subject to appropriate safeguards which, in the case of facilities which might create hazards to health or safety or interfere with property, shall be agreed with the appropriate _____ authorities.

SECTION 6

The facilities provided for in sections 4 and 5 may, to the extent necessary for efficient operation, be established and operated outside the headquarters area. The appropriate _____ authorities shall, at the request of the Unit, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the Unit of appropriate premises for such purposes and for the inclusion of such premises in the headquarters seat.

Article III

INVIOIABILITY OF THE HEADQUARTERS SEAT

SECTION 7

(a) The Government recognizes the inviolability of the headquarters seat, which shall be under the control and authority of the Unit as provided in this Agreement.

(b) Except as otherwise provided in this Agreement or in the General Convention, the laws of _____ shall apply within the headquarters seat.

(c) Except as otherwise provided in this Agreement or in the General Convention, the courts or other appropriate organs of _____ shall have jurisdiction, as provided in applicable laws, over acts done and transactions taking place in the headquarters seat.

SECTION 8

(a) The headquarters seat shall be inviolable. No officer or official of _____, or other person exercising any public authority within _____, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Director. The service of legal process, including the seizure of private property, shall not take place within the headquarters seat except with the express consent of, and under conditions approved by, the Director.

(b) Without prejudice to the provisions of the General Convention or article X of this Agreement, the Unit shall prevent the headquarters seat from being used as a refuge by persons who are avoiding arrest under any law of _____, who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process.

Article IV

PROTECTION OF THE HEADQUARTERS SEAT

SECTION 9

(a) The appropriate _____ authorities shall exercise due diligence to ensure that the tranquility of the headquarters seat is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbance in the immediate vicinity of the headquarters seat, and shall provide on the boundaries of the headquarters seat such police protection as may be required for these purposes.

(b) If so requested by the Director, the appropriate _____ authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters seat.

SECTION 10

The appropriate _____ authorities shall take all reasonable steps to ensure that the amenities of the headquarters seat are not prejudiced and that the purposes for which the headquarters seat is required are not obstructed by any use made of the land or buildings in the vicinity of the headquarters seat. The Unit shall take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters seat are not prejudiced by any use made of the land or buildings in the headquarters seat.

Article V

PUBLIC SERVICES IN THE HEADQUARTERS SEAT

SECTION II

(a) The appropriate _____ authorities shall exercise, to the extent requested by the Executive Director, their respective powers to ensure that the headquarters seat shall be supplied with the necessary

public services, including, without limitation by reason of this enumeration, electricity, water, sewerage, gas, post, telephone, telegraph, local transportation, drainage, collection of refuse and fire protection, and that such public services shall be supplied on equitable terms.

(b) In case of any interruption or threatened interruption of any such services, the appropriate _____ authorities shall consider the needs of the Unit as being of equal importance with those of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the Unit is not prejudiced.

(c) The Director shall, upon request, make suitable arrangements to enable duly authorized representatives of the appropriate public services bodies to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters seat under conditions which shall not unreasonably disturb the carrying out of the functions of the Unit.

(d) Where gas, electricity, water or heat is supplied by appropriate _____ authorities, or where the prices thereof are under their control, the Unit shall be supplied at tariffs which shall not exceed the lowest comparable rates accorded to _____ governmental administrations.

Article VI

COMMUNICATIONS AND PUBLICATIONS

SECTION 12

(a) All official communications directed to the Unit or to any officials of the Environment Secretariat, at the headquarters of the seat, and all outward official communications of the Unit, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings.

(b) The Unit shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

SECTION 13

(a) The Government recognizes the right of the Unit freely to publish and broadcast within _____ in the fulfilment of its purpose.

(b) It is, however, understood that the Unit shall respect any laws of _____ or any international conventions to which _____ is a party, relating to copyrights.

Article VII

FREEDOM FROM TAXATION

SECTION 14

(a) The Unit, its assets, income and other property shall be exempt from all forms of direct taxes, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by the Unit and that the Unit will not claim exemption from taxes which are, in fact, no more than charges for public utility services.

(b) While the Unit will not generally claim exemption from taxes which constitute part of the cost of goods purchased by or services rendered to the Unit, including rentals, nevertheless when the Unit is making important purchases for official use on which such taxes or duties have been charged or are chargeable, the Government shall make appropriate administrative arrangements for the remission or refund of such taxes or duties. With respect to such taxes or duties, the Unit shall at all times enjoy at least the same exemptions and facilities as are granted to _____ governmental administrations or to chiefs of diplomatic missions accredited to _____, whichever are the more favourable.

(c) In any transaction to which the Unit is a party, the Unit shall be exempt from all taxes, recording fees, and documentary taxes.

(d) Articles imported or exported by the Unit for official purposes shall be exempt from customs duties and other levies, and from prohibitions and restrictions on imports and exports.

(e) The Unit shall be exempt from customs duties and other levies, prohibitions and restrictions on the importation of service automobiles, and spare parts thereof, required for its official purposes.

(f) The Government shall, if requested, grant the Unit such facilities for the procurement of gasoline or other fuels and lubricating oils for each such automobile operated by the Unit in such quantities as are required for the work of the Unit and at such special rates as may be established for diplomatic missions in _____.

(g) Articles imported in accordance with sub-sections (d) and (e) or obtained from the Government in accordance with sub-section (f) of this section, may be sold by the Unit in _____ at any time after their importation or acquisition, subject to the Government regulations concerning payment by the buyer of customs duties and other levies.

Article VIII

FINANCIAL FACILITIES

SECTION 15

(a) Without being subject to any financial controls, regulations or moratoria of any kind, the Unit may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them; ^{WSJ}

(ii) Operate accounts in any currency;

(iii) Purchase through authorized channels, hold and dispose of funds, securities and gold;

(iv) Transfer its funds, securities, gold and currencies to or from _____, to or from any other country, or within _____.

(b) The Government shall assist the Unit to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

(c) The Unit shall, in exercising its rights under this section, pay due regard to any representations made by the Government insofar as effect can be given to such representations without prejudicing the interests of the Unit.

Article IX

SOCIAL SECURITY AND PENSION FUND

SECTION 16

The United Nations Joint Staff Pension Fund shall enjoy legal capacity in _____ and shall enjoy the same exemptions, privileges and immunities as the Unit itself.

SECTION 17

The Unit shall be exempt from all compulsory contributions to, and officials of the Environment Secretariat shall not be required by the Government to participate in, any social security scheme of _____.

SECTION 18

The Government shall make such provision as may be necessary to enable any official of the Unit who is not afforded social security coverage by the Unit to participate, if the Unit so requests, in any social security scheme of _____. The Unit shall, insofar as possible, arrange, under conditions to be agreed upon, for the participation in the _____ social security system of those locally recruited members of its staff who do not participate in the United Nations Joint Staff Pension Fund or to whom the Unit does not grant social security protection at least equivalent to that offered under _____ law.

Article X

TRANSIT AND RESIDENCE

SECTION 19

(a) The Government shall take all necessary measures to facilitate the entry into and sojourn in _____ territory and shall place no impediment in the way of the departure from _____ territory of the persons listed below; it shall ensure that no impediment is placed in the way of their transit to or from the headquarters seat and shall afford them any necessary protection in transit:

- (i) Representatives of Member States, their families and other members of their households, as well as clerical and other auxiliary personnel and the spouses and dependent children of such personnel;
- (ii) Officials of the Environment Secretariat, their families and other members of their households;
- (iii) Officials of the United Nations or of one of the specialized agencies or of the International Atomic Energy Agency, attached to the Unit, and those who have official business with the Unit, and their spouses and dependent children;
- (iv) Representatives of other organizations with which UNEP or the Unit has established official relations who have official business with the Unit;
- (v) Persons, other than officials of the Environment Secretariat, performing missions authorized by UNEP or the Unit or serving on committees or other subsidiary organs of the Unit, and their spouses;
- (vi) Representatives of the press, radio, film, television or other information media who have been accredited to the Unit in its discretion after consultation with the Government;

(vii) Representatives of other organizations or other persons invited by the Unit to the headquarters seat on official business. The Director shall communicate the names of such persons to the Government before their intended entry.

(b) This section shall not apply in the case of general interruptions of transportation, which shall be dealt with as provided in section 11 (b), and shall not impair the effectiveness of generally applicable laws relating to the operation of means of transportation.

(c) Visas, where required for persons referred to in this section, shall be granted without charge and as promptly as possible.

(d) No activity performed by any person referred to in sub-section (a) in his official capacity with respect to the Unit shall constitute a reason for preventing his entry into or his departure from the territory of _____ or for requiring him to leave such territory.

(e) No person referred to in sub-section (a) shall be required by the Government to leave _____ save in the event of an abuse of the right of residence, in which case the following procedure shall apply:

- (i) No proceeding shall be instituted to require any such person to leave _____ except with the prior approval of the Minister for the time being responsible for Foreign Affairs of _____;
- (ii) In the case of a representative of a Member State, such approval shall be given only after consultation with the Government of the Member State concerned;
- (iii) In the case of any other person mentioned in sub-section (a) such approval shall be given only after consultation with the Executive Director, and if expulsion proceedings are taken against any such person, the Executive Director shall have the right to appear or to be represented in such proceedings on behalf of the person against whom such proceedings are instituted; and

(iv) Persons who are entitled to diplomatic privileges and immunities under section 23 shall not be required to leave _____ otherwise than in accordance with the customary procedure applicable to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to _____.

(f) This section shall not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by this section come within the classes described in sub-section (a), or the reasonable application of quarantine and health regulations.

Article XI

REPRESENTATIVES TO THE UNIT

SECTION 20

Representatives of Member States to meetings of or convened by the Unit, and those who have official business with the Unit, shall, while exercising their functions and during their journey to and from _____ enjoy the privileges and immunities provided in article IV of the General Convention.

SECTION 21

The Director shall communicate to the Government a list of persons within the scope of this article and shall revise such list from time to time as may be necessary.

Article XII

OFFICIALS AND EXPERTS OF THE ENVIRONMENT SECRETARIAT

SECTION 22

Officials of the Environment Secretariat shall enjoy within and with respect to _____ the following privileges and immunities:

(a) Immunity from legal process of any kind in respect of words spoken or written, and of acts performed by them in their official capacity, such immunity notwithstanding that the persons concerned may have ceased to be officials of the Environment Secretariat or the Unit;

(b) Immunity from seizure of their personal and official baggage;

(c) Immunity from inspection of official baggage, and if the official comes within the scope of section 23, immunity from inspection of personal baggage;

(d) Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by UNEP or the Unit for services past or present or in connexion with their service with UNEP or the Unit;

(e) Exemption from any form of taxation on income derived by them from sources outside _____;

(f) Exemption from registration fees in respect of their automobiles;

(g) Exemption, with respect to themselves, their spouses, their dependent relatives and other members of their households, from immigration restrictions and alien registration;

(h) Exemption from national service obligations, provided that, with respect to _____ nationals, such exemption shall be confined to officials whose names have, by reason of their duties, been placed upon a list compiled by the Executive Director and approved by the Government; provided further that should officials, other than those listed, who are _____ nationals, be called up for national service, the Government shall, upon request of the Executive Director, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of the Unit;

(i) The right to purchase petrol free of duty for their vehicles on similar terms as accorded to members of diplomatic missions accredited to _____;

(j) Freedom to acquire or maintain within _____ or elsewhere foreign securities, foreign currency accounts, and other movables and the right to take the same out of _____ through authorized channels without prohibition or restriction;

(k) Freedom to purchase one dwelling house within _____ for strictly personal use, and the right to finance such purchase through local mortgage arrangements under the same conditions applicable to _____ nationals; in the event of sale of such house, the right to take out of _____, through authorized channels, the proceeds of the sale, after repayment of any outstanding local loan or local mortgage, in transferable currency;

(l) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to _____ and,

(m) The right to import for personal use, free of duty and other levies, prohibitions and restrictions on imports:

- (i) their furniture, household and personal effects, in one or more separate shipments, and thereafter to import necessary additions to the same;
- (ii) one automobile, and in the case of officials accompanied by their dependents, two automobiles every three years, unless the Unit and the Government agree in particular cases that replacements may take place at an earlier date, because of loss, extensive damage or otherwise;
- (iii) reasonable quantities of certain articles including liquor, tobacco, cigarettes and foodstuffs, for personal use or consumption and not for gift or sale.

(n) Automobiles imported in accordance with sub-section (m)(ii) of this section may be sold in _____ at any time after their importation, subject to the Government regulations concerning payment by the buyer of customs duties;

(o) Officials of the Environment Secretariat other than officials of the Unit shall not enjoy the privileges, immunities and exemptions provided for in sub-sections (e), (f), (h), (i), (k), (m) and (n) of this section, it being understood, however, that this limitation is without prejudice to any privilege, immunity or exemption to which they may be entitled under the General Convention;

(p) Officials of the Unit who are locally recruited shall enjoy only those privileges and immunities provided in the General Convention, it being understood, nevertheless, that such privileges and immunities include exemption from taxation on pensions paid to them by the United Nations Joint Staff Pension Fund.

SECTION 23

In addition to the privileges and immunities specified in section 22, the Director and other officials of the Environment Secretariat having the professional grade P-5 and above, and such additional categories of officials of the Unit as may be designated, in agreement with the Government, by the Executive Director in consultation with the Secretary-General of the United Nations on the ground of the responsibilities of their positions in the Unit, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to _____.

SECTION 24

Experts (other than officials coming within the scope of sections 22 and 23) performing missions authorized by, serving on committees or other subsidiary organs of, or consulting at its request in any way with, the Unit, shall enjoy, within and with respect to _____, the following privileges and immunities so far as may be necessary for the effective exercise of their functions:

(a) Immunity in respect of themselves, their spouses and their dependent children from personal arrest or detention and from seizure of their personal and official baggage;

(b) Immunity from legal process of any kind with respect to words spoken or written, and all acts done by them in the performance of their official functions, such immunity to continue notwithstanding that the persons concerned may no longer be employed on missions for, serving on committees of, or acting as consultants for the Unit, or may no longer be present at the headquarters seat or attending meetings convened by the Unit;

(c) Inviolability of all papers, documents and other official material;

(d) The right, for the purpose of all communications with the Unit, to use codes and to dispatch or receive papers, correspondence or other material by courier or in sealed bags;

(e) Exemption with respect to themselves and their spouses from immigration restrictions, alien registration and national service obligations;

(f) The same protection and repatriation facilities with respect to themselves, their spouses, their dependent relatives and other members of their households as are accorded in time of international crisis to members, having comparable rank, of the staff of chiefs of diplomatic missions accredited to _____;

(g) The same privileges with respect to currency and exchange restrictions as are accorded to representatives of foreign governments on temporary official missions; and

(h) The same immunities and facilities with respect to their personal and official baggage as the Government accords to members, having comparable rank, of the staffs of chiefs of diplomatic missions accredited to _____;

(i) Where the incidence of any form of taxation depends upon residence, periods during which the persons designated in this section may be present in _____ for the discharge of their duties shall not be considered as periods of residence; in particular, such

persons shall be exempt from taxation on their salaries and emoluments received from the Unit during such periods of duty.

SECTION 25

(a) The Director shall communicate to the Government a list of the officials of the Unit and experts within the scope of this article and shall revise such list from time to time as may be necessary.

(b) The Government shall furnish persons within the scope of this section with an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all _____ authorities.

Article XIII

SETTLEMENT OF DISPUTES

SECTION 26

The Director shall make provision for appropriate methods of settlement of:

(a) Disputes arising out of contracts and disputes of a private law character to which the Unit is a party; and, in consultation with the Government;

(b) Disputes involving an official of the Environment Secretariat who, by reason of his official position, enjoys immunity, if such immunity has not been waived.

SECTION 27

(a) Any dispute between the Unit and the Government concerning the interpretation or application of this Agreement or of any supplemental agreement, or any question affecting the headquarters seat or the relationship between the Unit and the Government, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators: one to be chosen by the Executive Director, one to be chosen by the Minister for the time being responsible for Foreign Affairs of _____ and the third,

who shall be chairman of the tribunal, to be chosen by the first two arbitrators. Should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Secretary-General of the United Nations or the Government.

(b) The Secretary-General of the United Nations or the Government may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

Article XIV

GENERAL PROVISIONS

SECTION 28

_____ shall not incur by reason of the location of the headquarters seat of the Unit within its territory any international responsibility for acts or omissions of the or of officials of the Environment Secretariat acting or abstaining from acting within the scope of their functions, other than the international responsibility which _____ would incur as a Member of the United Nations.

SECTION 29

Without prejudice to the privileges and immunities accorded by this Agreement, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of _____. They also have a duty not to interfere in the internal affairs of _____.

SECTION 30

(a) The Executive Director and the Director shall take every precaution to ensure that no abuse of a privilege or immunity conferred by this Agreement shall occur.

(b) Should the Government consider that an abuse of a privilege or immunity conferred by this Agreement has occurred, the Executive Director shall, upon request, consult with the appropriate authorities to determine whether any such abuse has occurred. If such consultations fail to achieve a result satisfactory to the Executive Director and to the Government, the matter shall be determined in accordance with the procedure set out in section 27.

SECTION 31

This Agreement shall apply irrespective of whether the Government maintains or does not maintain diplomatic relations with the State concerned and irrespective of whether the State concerned grants a similar privilege or immunity to diplomatic envoys or nationals of _____.

SECTION 32

Whenever this Agreement imposes obligations on the appropriate _____ authorities, the ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

SECTION 33

The provisions of this Agreement shall be complementary to the provisions of the General Convention. Insofar as any provision of this Agreement and any provision of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other.

SECTION 34

This Agreement shall be construed in the light of its primary purpose of enabling the Unit at its headquarters in _____ fully and efficiently to discharge its responsibilities and fulfil its purposes.

SECTION 35

Consultations with respect to modifications of this Agreement shall be entered into at the request of the United Nations or the Government. Any such modification shall be by mutual consent.

SECTION 36

The Unit and the Government may enter into such supplemental agreements as may be necessary.

SECTION 37

This Agreement shall cease to be in force:

- (i) by mutual consent of the United Nations and the Government; or
- (ii) if the permanent headquarters of the Unit is removed from the territory of _____, except for such provisions as may be applicable in connexion with the orderly termination of the operations of the Unit at its permanent headquarters in _____ and the disposal of its property therein.

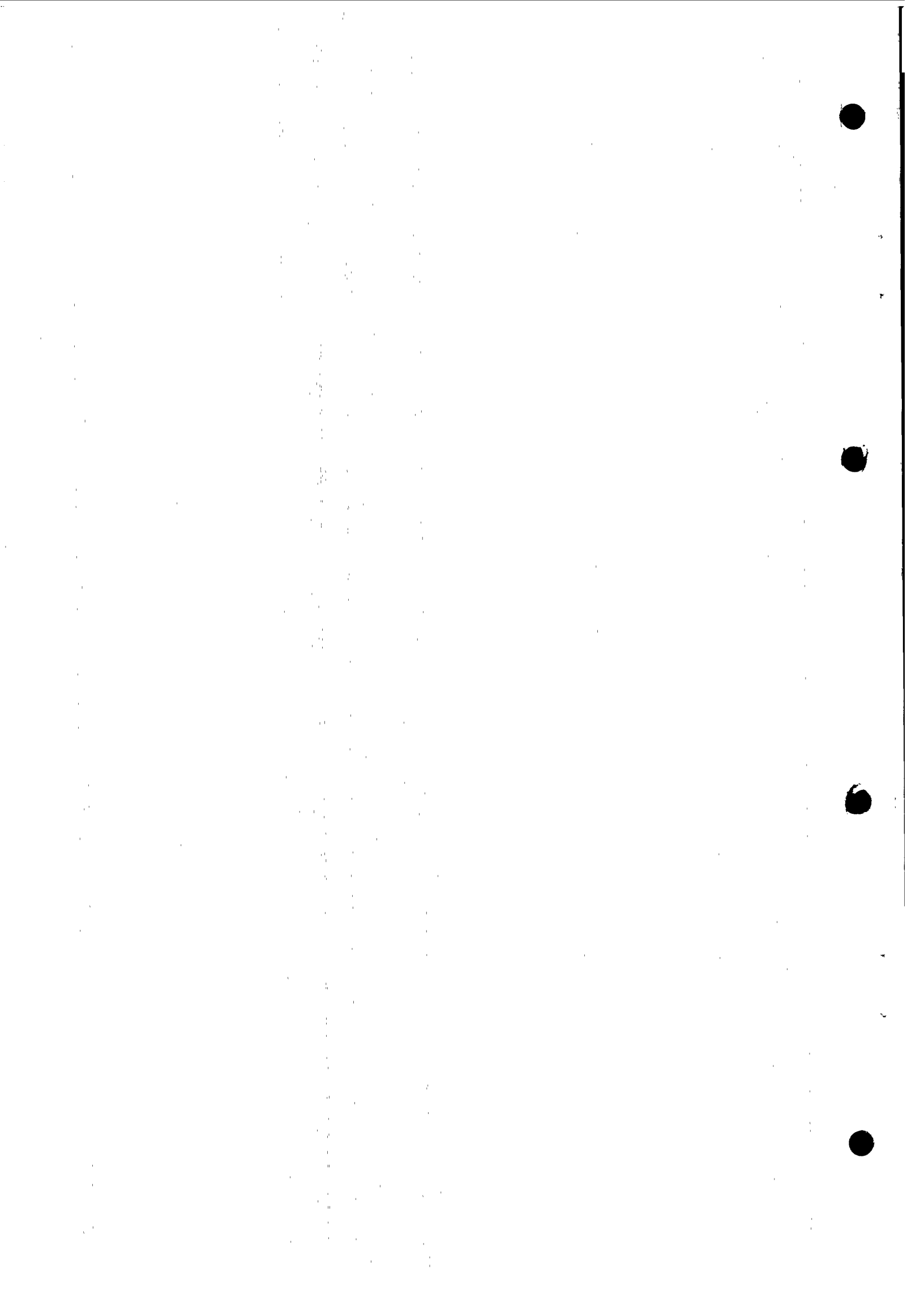
SECTION 38

This Agreement shall enter into force upon signature by the United Nations and signature and ratification by _____

Done at _____ in the English and _____ language(s), on this _____

For the United Nations

For _____



A. Letter received from the Ministry of Foreign Affairs
of France

(dated 19 August 1980)

"Sir,

I have the honour to refer to your letter of 27 June 1980 and attachments thereto (letter to Mr. Saint-Mleux, Minister of State at Monaco, and the draft headquarters agreement between UNEP and the Principality to which the French Republic should also be a party) concerning the candidature of Monaco as host for the Co-ordinating Unit for the Mediterranean Action Plan.

These communications call for a number of comments on my part.

As you yourself note, four countries have offered to host this Unit. However, no decision has been taken on this point; unless there is a prior agreement between the various candidates, a decision will have to be made by the Contracting Parties to the Barcelona Convention at their next meeting, which is to be held at Cannes in March 1981. Of the four countries (Spain, Greece, Lebanon, Monaco), all, with the exception of the Principality, are Parties to the 1946 Convention and therefore no headquarters agreement would have to be negotiated if the Co-ordinating Unit were established in their territory (as in the case of the UNEP Industry and Environmental Office in Paris).

The case of Monaco is different, but a solution has already been found in the past with regard to both the International Hydrographic Office and UNEP itself (agreement on the establishment at Monaco of the UNEP Office for the Co-ordinated Mediterranean Pollution Monitoring and Research Programme).

Mr. Peter Oltmanns
Assistant Executive Director
United Nations Environment Programme
Nairobi

I also find it difficult to concur with your interpretation of paragraph 37 of the report of the Inter-governmental Review Meeting held at Barcelona (UNEP/IG.18/7) the second sentence of which reads: "The study would include not only revised estimates of expenditure, but also the agreed legal status of the Unit".

The matter concerns the intrinsic legal status of the Unit, i.e. its organizational relationship with the other integral parts of the Mediterranean Action Plan; the meaning is clear in the French version of the text and is that intended by the participants in the Inter-governmental Meeting held at Barcelona in February 1980.

In these circumstances, consideration of a headquarters agreement which in a sense amounts to an invitation to a tender for the best bidder (fourth paragraph of your letter to Mr. Saint-Mleux) is not only premature but also discriminatory with regard to Monaco, the only one of the States with such an obligation to negotiate.

Needless to say, in the event that the Contracting Parties decided in favour of the Principality, my Government would be fully prepared, in conjunction with that of Monaco, to conclude with the United Nations, represented by UNEP, an agreement similar to that mentioned above.

Accept, Sir, the assurances of my highest consideration."

B. Letter received from the Embassy of Greece in Nairobi

(dated 9 September 1980)

"Sir,

We refer to your letter regarding the Co-ordinating Unit for the Mediterranean Action Plan. I have the honour to transmit to you, according to instructions received from the Greek Ministry of Foreign Affairs, the following comments:

1. The wording "Republic of Greece" should be replaced by the correct term "Hellenic Republic".
2. In Article IV - Section 10: the wording "... by any use made of the land or buildings in the vicinity of the Headquarters seat". We feel the above should be deleted from this section as it is contrary to the surrounding land owners; legal rights, which could cause future problems.
3. In Article IX - Section 16: We are not prepared to accept from an International Law point of view your Section 16 regarding the Social Security and Pensions Fund. We have been unable to find any precedent in any other similar Agreement. However, we believe that this subject may be negotiated under a separate Protocol to this Agreement.
4. Article IX - Section 17: This section should be reworded, so that the Greek authorities are consulted prior to any member of the Unit participating in any Greek security scheme.
5. At the end of Article IX - Section 17: The phrase "unless such officials are nationals or permanent residents of Greece" should be added.
6. In Article XII - Section 22 para. (h) and Section 24 para (e): we feel that the exemption of military and other civil obligations to Greek employees and specialists are exaggerated, especially in relation to other similar Agreements.
7. Referring to the beginning of para (k) of Section 22 - Article XIII, the phrase "under the same conditions applicable to Greek nationals", should be omitted, as it is doubtful if this is in accordance with the Greek Law, applicable to border regions.

8. Finally, the said Agreement must be executed in both the Greek and English languages.

These comments deal with our more essential points and it would be most useful if the Legal Liaison Officer of your Secretariat could travel to Greece at a convenient time to discuss the finer details and to review with the appropriate Greek authorities the provisions of the Agreement.

Accept, Sir, the assurances of my highest consideration."

Mr. A. Brough
Chief of the Fund Programme Management Division
Bureau of the Environment Fund and Administration
UNEP
P.O. Box 30552
Nairobi

C. Letter received from the Minister of State,
Principality of Monaco

(dated 31 July 1980)

"Sir,

I have the honour to acknowledge receipt of your letter of 27 June 1980 enclosing the text of a draft headquarters agreement to be concluded between the United Nations and the Government of the Principality of Monaco relating to the establishment on Monegasque territory of the Co-ordinating Unit for the Mediterranean Action Plan.

This text will be carefully examined by the competent administrative authorities and I shall of course inform you of any observations they may wish to make.

However, in view of the fact that an agreement also has to be concluded between France and the Principality on this question, I do not think it will be possible to reply to you before 1 September, since the text of this agreement also has to be submitted for approval by the French authorities. I shall nevertheless send you my reply as soon as possible.

I would further remind you that a draft headquarters agreement was transmitted to you in my letter of 4 January 1978. The Government of Monaco continues to be prepared to sign this text.

Accept, Sir, the assurances of my highest consideration."

Mr. H.P. Oltmanns
Assistant Executive Director
United Nations Environment Programme
KENYA
Nairobi

D. Outcome of discussions with the Spanish authorities

The most recent of the headquarters agreements concluded by Spain with intergovernmental organizations was the one concluded in 1975 with the World Tourism Organization. This agreement was considered by the Spanish authorities as being the most advanced of the agreements of this type concluded by Spain and accordingly as embodying the most comprehensive and adequate provisions regarding the status of international organizations headquartered in Spain and their staff. In fact, by application of a sort of "most favoured organization clause" principle, the Spanish authorities applied the provisions of that agreement, which they regarded as being fully in line with the Vienna Convention on Diplomatic Relations, to any other international organization having its headquarters in Spain, even if the headquarters agreement for the organization placed it in a less favourable position than the WTO. Any privilege, immunity or exemption granted to an official of an international organization headquartered in Spain was automatically extended by the Spanish authorities to diplomatic agents accredited in Madrid.

Accordingly, since the draft agreement submitted by UNEP on certain points went beyond the WTO headquarters agreement, it would have to be brought into line with that agreement in order to avoid difficulties that might retard or impede its acceptance by Spain.

The UNEP draft headquarters agreement provided for privileges and immunities in respect of petrol and free automobile registration plates. The WTO agreement has no such provisions. In this respect it was hardly necessary for the headquarters agreement for the Mediterranean Co-ordinating Unit to make provision for those particular privileges and immunities in as much as they were granted voluntarily by the Spanish authorities to all diplomats and officials of international organizations headquartered in Spain.

A point on which the draft agreement proposed by UNEP differed from the Spanish application of the WTO agreement related to duty-free automobiles: the Spanish authorities allowed an official of an international organization only one duty-free automobile, whether or not he had dependents, whereas the draft proposed by UNEP would allow an official of the Unit to own two such automobiles if he has dependents. Reservations were also expressed about the provision of the agreement proposed by UNEP whereby retired officials of the Unit would be exempt from income tax on their pensions. (No such provision is included in the WTO agreement, article 17(1) of which does not appear to cover pensions).

The granting of full diplomatic privileges and immunities to the staff of the Unit of P-5 rank and above was not likely to create problems if the number of such staff were not excessive. There was, however, a discrepancy between this system and that provided for in article 14(3) of the WTO headquarters agreement.

Attention was drawn to article 28 of the WTO headquarters agreement, with particular reference to paragraph 1 thereof, which provides for the application of the agreement pending its entry into force. (The agreement was signed on 10 November 1975 and ratified by Spain [following approval by the Cortes] on 8 October 1976; it entered into force on 2 June 1977 on communication by the parties to each other of the instruments necessary for that purpose).

A formal reply to the letter by which UNEP had proposed a headquarters agreement for the Mediterranean Co-ordinating Unit was received from the Spanish Government and is reproduced below:

Nairobi, 23 October 1980

NOTE VERBAL

" The Permanent Mission of Spain presents its compliments to the UNEP Secretariat and, with reference to the letter dated 27 June 1980 from Mr. Oltmanns, the Assistant Executive Director, addressed to the Ministry of Foreign Affairs of Spain, a copy of which letter was sent by the Secretariat to this Permanent Mission on 2 July 1980 and related to the headquarters for the Mediterranean Action Plan, has the honour to state that the Spanish Government's attitude in this matter was communicated verbally to Mr. Roberto Lavalle during the visit made by the UNEP Legal Adviser to Madrid in September 1980.

In this connection, it should be noted that the Spanish Government, following a report from the Office of the International Legal Counsel in the Ministry of Foreign Affairs, takes the view that the Agreement signed between Spain and the World Tourism Organization (WTO) concerning the Headquarters of the Organization in Madrid could serve as a suitable model, because it involves the same kinds of privileges and immunities as Spain is able and is accustomed to grant.

If the Draft Agreement forwarded by Mr. Oltmanns were accepted, it would go beyond what is usual in the case of Diplomatic Missions established in Spain. For this reason, the Spanish Government considers that the model for a counter-proposal it can make for an agreement establishing the Headquarters of the Mediterranean Action Plan at Barcelona would be the existing Agreement between Spain and WTO, of 10 November 1975, a copy of which is attached for consideration by the appropriate department of the UNEP Secretariat.

Naturally, an indispensable requirement would be the ratification of any agreement and the approximate time involved - and for this purpose the Agreement between Spain and WTO is taken as a model - would be about one year for ratification and 9 months for entry into force, which occurred on 2 June 1977, as can be seen from the attached photocopy.

The Permanent Mission of Spain takes this opportunity to renew to the UNEP Secretariat the assurances of its highest consideration."

Secretariat of the United Nations
Environment Programme
Nairobi