



Agreement on the Conservation of Albatrosses and Petrels

Second Meeting of Advisory Committee

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**The Argentine Republic's Comments on the
Draft Headquarters Agreement**

Author: **Argentina**

THE ARGENTINE REPUBLIC

Comments regarding the Draft Headquarters Agreement between Australia and the Secretariat of the Agreement on the Conservation of Albatrosses and Petrels prepared by the Interim Secretariat.

The following observations are proposed as Argentina's contribution to the Draft HQA.

A. The last paragraph of the preamble states as purpose "*to define the legal capacity, privileges and immunities of the Secretariat and the privileges and immunities to be enjoyed by the Secretariat and its officers under the laws of Australia*".

Privileges and immunities of international agencies and organizations are governed, as a norm, by international law. Otherwise, if such matters were the object of regulation exclusively by the national laws of the host State, such a State could unilaterally alter any applicable norms. This situation is not desirable as such agencies and organizations require guarantees in terms of privileges and immunities which could only be duly protected through their establishment within the remit of international law, that is, beyond the discretion of the host State. Thus, the need to consider having a treaty, the "Headquarters Agreement", between the host State and the Secretariat.

We, therefore, do not consider it appropriate that this agreement be established, as pronounced in the preamble of the Draft HQA, "under the laws of Australia". By way of example, it is worth recalling an analogous preambular paragraph to that in question on this subject, but which rightly omits restricting the privileges and immunities to local laws (in this case, the laws of Argentina) and which was included in the Headquarters Agreement for the establishment of the Antarctic Treaty Secretariat, between the Antarctic Treaty Consultative Meeting (ATCM) and the Argentine Republic: "*Desiring to define the legal capacity of the Secretariat as an organ of the ATCM, as well as its privileges and immunities and those of the Executive Secretary and other staff members in the territory of the Argentine Republic*".

In the light of the above statement, we suggest that "under the laws of Australia" be replaced with "in the territory of Australia".

Further, the redundancy resulting from the repetition of 'Secretariat' in two instances within the same preambular paragraph should be corrected.

B. We suggest replacing the word "records" with the word "archives" under item j) of Article 1.

C. Item m) of Article 1 defines as “serious offence”¹ as an indictable offence publishable on conviction with a period of imprisonment of one year or more. It is worth recalling that it is due to the commission of such type of offences that the “representatives of the Parties” (Art. 15.1.a) and the “experts” (Art. 18.1.d) would lose their immunity from arrest and detention. The Headquarters Agreement between the Government of Australia and the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) contemplates to this effect the commission of a ‘serious offence’ which applies on those instances for which the conviction would be a period of five years or more. The Headquarters Agreement for the establishment of the Antarctic Treaty Secretariat in Buenos Aires does not contain any provisions for exceptions in terms of immunity from arrest and detention from the Representatives of the Parties.

There appears to be no reason justifying the amendment proposed by Australia in this Draft HQA. On the contrary, the Parties’ Representatives meeting in Hobart shall, in most cases, be diplomatic officials of the States which are Parties to the Agreement accredited in Australia, to whom the immunity from arrest or detention applies without limitations as guaranteed by the Vienna Convention on Diplomatic Relations, 1961. It was, precisely, because of this that the HQA for the establishment of the Antarctic Treaty Secretariat in Buenos Aires did not include such a limitation to the immunity from detention or arrest of the Parties’ Representatives.

We therefore propose to delete such a limitation in respect of the Parties’ Representatives in 15.1.a, and, if the limitation is deemed indispensable to be retained in relation to experts, that the notion of “serious offence” (five years) be used to such effects, which Australia had already accepted in the CCAMLR Headquarters Agreement.

D. The establishment of the Secretariat and its headquarters is a competence of the Meeting of the Parties of ACAP, during its first Session and pursuant to Article VIII, 11,c) of the Agreement. Therefore, the wording of Article 4 (“The Headquarters of the Secretariat shall be established in Hobart, Tasmania, Australia”) does not correspond to the Headquarters Agreement, which shall be undertaken between Australia and the Secretariat. Notwithstanding, it would be indeed appropriate that in some preambular paragraph of the Headquarters Agreement, following the paragraph regarding the rules of ACAP on the establishment of the Secretariat, explicit reference should be made to Resolution 1.1, adopted at the First Session of the Meeting of the Parties, 10 – 12 November 2004, during which the establishment of the Secretariat in Hobart was decided.

E. The immunity of members of staff from suit and other legal process in respect of acts and things done by them in the exercise of their official functions, stipulated in Art. 17.1.a) must apply to all members of staff. The Draft HQA excludes nationals or permanent residents of Australia from the remit of personal application of this rule (Art. 17.3). There are no objections to this exclusion being applied in terms of taxes and other privileges applicable in relation to the principle of equality before the law in Australia. However, the strictly functional immunity provided for under Art. 17.1.a, in the event of its non application to all persons regardless of their nationality or permanent residence status, would compromise the independence of the work of

¹ TN – Translator’s Note: The text of the CCAMLR HQA has for ‘serious offence’ the Spanish words ‘delito grave’ but the Spanish translation of the ACAP HQA uses for ‘serious offence’ the Spanish words ‘delito serio’.

the Secretariat, unless it is stipulated that no national or permanent resident of Australia can be a member of staff of the Secretariat.

We therefore propose that paragraph 3 of Article 17 be worded thus: *“The privileges and immunities described in items b) and g) of paragraph 1 of this Article shall not be accorded to any staff member who is a national or permanent resident of Australia”*.

F. The statement in paragraph E) above also applies to the immunities of experts, as stated in Art. 18.1.a, regarding the exemption found in paragraph 3 of the same clause.

G. References to Articles stated as “XX” found in Articles 9.2 and 11 should be completed.

H. In Art. 16 of the HQA (under ‘Executive Secretary’) a reference is made to Article 18 but this reference does not seem to be accurate. It is our understanding that privileges and immunities accorded to the Executive Secretary are granted in addition to those conferred upon staff members, found in Art. 17 of the HQA. Thus, the reference included in Art. 16 should be 17 and not 18.

Buenos Aires, 24 April 2006