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Report of the Chair of the Second Informal Meeting on the Establishment of the Antarctic Treaty Secretariat

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Second Informal Meeting on the Establishment of the Antarctic Treaty Secretariat

Report of the Chair of the Meeting, Professor Francesco Francioni

Buenos Aires, 1-4 April 2003

Opening of the Meeting

The meeting was opened by the Argentine Undersecretary for Foreign Policy Ambassador Fernando Petrella who welcomed all the delegations and underlined the commitment of all parties to the establishment of the Secretary of the Antarctic Treaty. Then, Minister Rubén Patto, presiding the Argentine delegation, presented a general overview of the intersessional activities that led up to this meeting. He pointed out that although great progress toward the establishment of the Secretariat was made, there were still important points that needed to be discussed, such as cost sharing and budget, and other matters on which Papers had been produced during the interim period. He particularly asked the parties to have flexible positions. Finally, he proposed the appointment of Professor Francesco Francioni of the Italian delegation as the Chair of the meeting.

All delegations agreed on the election of Professor Francioni as Chair who, after accepting the position, thanked all delegations for entrusting him with the Presidency of the meeting and expressed his gratitude to the Government of Argentina for hosting the second informal meeting.

Subsequently, the Chair suggested to organize the meeting rationally before dealing with the different substantive issues. He remarked that there have been some subjects left to be solved out from the previous meeting but he underlined that the most important one was that of cost sharing. There was also a set of problems concerning the legal harmonization and streamlining of the texts. Professor Francioni made the proposal of dividing the meeting into two groups: the cost sharing group and a legal contact group. The legal group would be chaired by Professor Francioni and the cost sharing group, functioning as the Committee of the Whole, by Mr. Jan Huber. Both proposals were approved.

Some delegations expressed their concern as to whether they would be able to attend both of the groups. The Chair reassured that daily reports would be presented at the plenary sessions, together with revised documents, and all final decisions would be taken in the Plenary.

The Chair proceeded then to the adoption of the agenda. A number of delegations made remarks as to the timing devoted to the most important issues such as cost sharing and financial and staff regulations, and the way to deal with legal and political issues. The Chair also highlighted the most important points to be discussed in the legal group: constitutive instruments, Headquarters Agreement, rules of procedure and issues unsettled after Warsaw.

Plenary sessions

At the end of each day, the Chair of the groups presented their daily reports at the plenary sessions. The delegations were invited to give their impressions.

At the plenary of Wednesday, the Chair of the Whole presented orally the results of their deliberations during the day. The Chair of the legal contact group also made an oral presentation, and distributed the revised draft of a Measure and a revised draft of the clauses of the headquarters agreement that had been considered by the contact group. The Norwegian delegation presented a proposal for a very simple formula for the draft decision which would capture in a very simple language the most important notions included in the previous draft adopted at Warsaw.

On Thursday, the Chair of the Whole went through the Financial and Staff regulations to identify those legal issues which should be analyzed by the legal contact group and the political issues which should be analyzed by the Committee of the Whole. During the Plenary, the Chair of the Legal contact group made an oral presentation of the work achieved during the day regarding the financial regulations and the Draft Decision, and distributed a revised text for these instruments. Some changes were made to the Draft Decision to include comments made by several delegations. Finally, the Chair of the Committee of the Whole presented orally the results of their deliberations during the day and the changes made to the financial regulations were incorporated to the document.

In the final plenary, on Friday, a package proposal regarding the issue of cost sharing was submitted to the delegations taking into account the contributions produced during the week. There were many comments on the bracketed issues which still remain unsettled.

Report by the Chair of the Legal Contact Group¹

1) Measure (Annex 1):

The delegations started by discussing the Draft Measure that resulted from the Warsaw ATCM meeting. Some elements of this Measure were redrafted on the understanding that will be adopted by the ATCM and subject to approval by Parties according to their internal procedures. Once the Measure is approved by all Parties, the Depository will notify the Government of Argentina that the Chair of the ATCM is enabled to sign the Headquarters Agreement. Upon signature by both Parties to the Agreement it will enter into force.

Regarding Article 3, para.3 of the Draft Measure regarding the desirability of intersessional consultations between the Executive Secretary and the ATCM or the Parties, the Group decided to leave brackets as evidence that there is not yet an agreement on the subjects and scope of consultations that should take place. Delegations agreed that informal consultations would certainly take place frequently between the Executive Secretary and Parties. They also agreed that formal consultations or authorisations are prescribed in other instruments such as the Rules of Procedure or the Headquarters Agreement. There was disagreement, however on the need to include a general clause for other formal consultations not otherwise prescribed in the constitutive instruments. Some delegations, suggested to delete this paragraph, and one delegation manifested the need to keep some type of wording regarding consultations.

Article 4 was not discussed pending a decision on the issue of the budget by the Committee of the Whole.

The text of the Measure was renumbered in order to have a more logical sequence of provisions and was also corrected to ensure its internal coherence and its consistency with the

¹ Argentina expressed its understanding of the conclusions of the legal contact group in the sense that the proposed amendments of the Rules of Procedure of the ATCM would be negotiated after the adoption by the ATCM of the relevant instruments dealing with the establishment of the Secretariat.

other instruments under negotiation, specifically centring on harmonization with the Headquarters Agreement.

2) Headquarters Agreement (Annex 2):

Discussions on the Draft Headquarters Agreement started on Article 23. This Article was not changed, but several delegations expressed the opinion that they accepted the clause in the understanding that certain amendments should be approved via Measures to allow ratification by Parliament.

Regarding Article 24 Parties agreed to include a resort to binding arbitration making a general reference to disputes that may arise in the interpretation or implementation of this Agreement.

In the case of Article 25, the text was changed to reflect that the entry into force will take place only when the Measure comes into effect thus allowing the ATCM Chair to sign the agreement. Text on the provisional application of this Agreement was moved to the draft Decision.

3) Decision (Annex 3):

The legal contact group analysed the Draft Decision discussed in Warsaw and also a proposal presented by Norway that sought to include a simple and straightforward text that would guarantee provisional application of the relevant constitutive instruments until the Measure comes into force (a process which may take a few years).

Discussions centred on the clauses which required provisional application and those which necessarily would be implemented after the entry into force of the Measure. Some delegations considered it important to identify the precise clauses which would require full application from the start, those that would be implemented to the fullest extent possible until the Measure becomes effective, and those that could not be implemented until this moment. The decision, thus, includes separate provision for these cases.

After a thorough discussion of the elements in the Decision, its text was adopted and presented to the Plenary.

4) Financial Regulations (Annex 4):

The Legal Contact Group discussed the legal questions identified by the Committee of the Whole. After discussions, minor changes were made in several articles to ensure internal coherence, gender equality, and consistency with other instruments. Article 14.1. was amended to reflect that these regulations may be amended by a Decision of the ATCM.

5) Staff Regulations (Annex 5):

The Legal Contact Group met and analysed articles 1 and 2 of the Staff Regulations. The discussion focused specially on the definition of "dependant." Consensus was reached on a partial redrafting of Regulation 2.2. Minor changes relating to gender equality were made throughout the text. Some parties elaborated a new proposal on Regulation 2 based on the deletion of the reference to the Secretariat Staff as "international civil servants." Although broad consensus emerged as to the need to eliminate such reference, due to lack of time to discuss the

proposal in detail, the Chair decided, with the agreement of the members of the group, to include the following proposal in this Report:

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"REGULATION
DUTIES, OBLIGATIONS AND PRIVILEGES

- 2.1 Staff members, upon accepting their appointments, shall pledge themselves to discharge their duties faithfully and to conduct themselves with the interests of the ATCM in mind.
- 2.2 Staff members shall at all times conduct themselves in a manner in keeping with the Antarctic Treaty. They shall always bear in mind the loyalty, discretion and tact imposed on them by their responsibilities in the performance of their duties. They shall avoid all actions, statements or public activities which might be detrimental to the ATCM and its aims.
- 2.3 Staff members are not required to renounce either their national feelings or their political or religious convictions.
- 2.4 In the performance of their duties, staff members may neither seek nor accept instructions from any government or authority other than the ATCM²³⁴.
- 2.5 Staff members shall observe maximum discretion regarding official matters and shall abstain from making private use of information they possess by reason of their position. Authorisation for the release of information for official purposes shall lie with the ATCM or the Executive Secretary, as the case may require.
- 2.6 ⁵Staff members shall, in general, have no employment other than with the Secretariat. In special cases, staff members may accept other employment, provided that it does not interfere with their duties in the Secretariat, and that prior authorisation by the Executive Secretary has been obtained. The ATCM's prior authorisation shall be obtained in respect of the Executive Secretary.
- 2.7 No staff member may be associated in the management of a business, industry or other enterprise, or have a financial interest therein if, as a result of the official position held in the Secretariat, he/she may benefit from such association or interest.
- 2.8 Ownership of non-controlling stock in a company shall not be considered to constitute a financial interest within the meaning of Regulation 2.7.
- 2.9 Staff members ⁷shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement⁸ between the Argentine Republic and the Secretariat⁹, (pursuant to Article ____ of Measure ____ (2002))."

This draft was circulated by the Chair in the Plenary.

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² NZ – Recommends including 'or the Executive Secretary' after ATCM

³ Arg.- Considers that the Executive Secretary should be mentioned instead of the ATCM.

⁴ UK – Recommends including "**or the Executive Secretary as appropriate**". (The Executive Secretary will receive his his/her instructions from the ATCM, other staff Members from the Executive Secretary).

⁵ UK - Distinction here needs to be made between full-time and part-time staff. Secretariat staff such as translators' etc may well fall into the latter category. As a norm such staff is very likely to have/want employment outside the Secretariat. Recommend insertion of "Full-time" in front of "staff members".

⁶ UK – Recommends inclusion of the following after "been obtained". "These provisions do not relate to parttime staff who work less than [hrs] per week in the Secretariat's employ"

⁷ Arg.- Recommends adding "and experts", a category already recognized in the HQ Agreement.

⁸ Argentina – Recommends that this paragraph should read, "Staff members shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement".

⁹ UK – Recommends substituting "ATCM' for "Secretariat".

Report of the Committee of the Whole

The Committee addressed the following subjects:

1) Cost-sharing (Annex 6-7-8-9):

The discussion on cost-sharing focused on the Argentine proposal which was welcomed by the majority of the speakers. The proposal divided the budget into three parts: 50% of equal shares and 50% of variable contributions (30% according to the level of scientific activities undertaken by each party and 20% of users' fees depending on the size of the delegation to the ATCM). The criterion of the users' pay had little support. The way forward agreed on was to work on the basis of a combination of an allocated part of equal shares and of variable contributions relating to the level of activities in Antarctica and the ability to pay.

The Secretariat also worked on language (based on CCAMLR) which would be discussed during the week and should be included in the draft Measure. The language should establish what the shares of the parties would be and a provision to enable the ATCM to make adjustments.

Concerning the issue of cost sharing arrangements, the Argentine delegation presented a first draft of the actual language to be included in a measure or in a decision that could be used to reflect a compromise. The delegation also prepared a table showing the specific countries' contribution. The first draft received many comments and a second draft was elaborated. A controversial point was whether to include the words relating to the ability to pay or not. It was acknowledged that the actual apportioning is easier than the language to be used. It was also agreed that during the interim period, the cost-sharing mechanism will be used as a guideline for voluntary contributions

Australia put forward an alternative paper based on each country's voluntary declaration of its capacity to pay (tiered system), which could be merged with the Argentine proposal.

Finally, a new version of the package of documents was distributed among the delegations. The package contained:

- Language for article 4 of the Measure (Annex 6);
- A draft Decision on the apportioning of contributions with an accompanying schedule (Annex 7);
- The current scale of the SCAR contributions (Annex 8);
- A scale of contributions to the Antarctic Secretariat budget by country based on the SCAR scale and a hypothetical alternative scale (Annex 9).

The delegations made remarks about the language used in the decision and the procedures by which parties can notify to which category they should belong. Reference to the current scale of the contributions was made, recognizing that the SCAR scale is based on scientific activities, and the scale being discussed now will be based on wider considerations including the ability to pay. The SCAR scale would be used as the initial scale but provision should be made for countries to change their category. A hypothetical example was also provided. Furthermore, it should be noted that the apportioning method that the ATCM adopts is independent of that of SCAR. In a later elaboration, language was included in the schedule which gives countries the right to change their category once every three years if they wish.

2) Budget:

The issue of budget was introduced by the Secretariat and there was also an intervention of the CCAMLR expert, Mr. Jim Rossiter, who presented a number of questions which included the following: currency, the possibility of extra costs during the first period and whether to use the UN scheme for executive salaries.

Many issues were raised: the discussion of certain risks and uncertainties, the UN staff remuneration system and the position of the Executive Secretary. On this last point as well as with other positions there were at first differences of view about the role which an equitable geographic distribution should play in filling the executive positions. In the end it was recognized that this needs to be taken into account if possible, but that professional competence should be the first criteria for filling positions. Finally, the Committee discussed the ways to provide for expenses and for risks, and whether there is a need for a contingency fund.

The main difference identified between the budget for the interim period and the permanent Secretariat is that in the interim period there is no provision for the full translation and interpretation for the ATCM.

The Chairman mentioned that the interim budget raises important but rather difficult questions. It was acknowledged that the initial period is the most important one for the Secretariat in some respects. During this time, there will be a period of gradual build-up to the full financing of the Secretariat with a contribution of the Parties even if it is not compulsory (the amount of which was not fixed yet). There is also a clear desirability that the Secretariat uses the same set-up as in the definitive period as well as regards voluntary contributions which should have the same scheme as permanent contributions.

3) Intersessional consultation:

Another issue which was raised was that of intersessional consultation in case something that was not foreseen occurs. No conclusion was reached on this matter but there was agreement as to the need for some contact mechanism.

4) Financial Regulations (Annex 4):

It was agreed that the financial year should run from April 1st, to March 31st (inclusive) and that Regulation 4.4 be replaced by a new text based on the Japanese proposal. Discussions centered on the issue of whether the budget should be expressed in Argentine pesos or US dollars or Euros as well as on the need for a Contingency Fund. These matters were not agreed upon, and will be subject to further discussion.

Other articles were revised in order to clarify the text.

5) Staff Regulations (Annex 5):

Following the Argentine proposal, the delegates sought to identify the functions of the Secretariat which can be considered core functions, to be provided from the start of the Secretariat. The speakers agreed that the core functions were those indicated in the proposal with letters A (without full translation and interpretation services for the ATCM), G, I, D and E and that during the first months, the Secretariat could start working with three or four persons, including the Executive Secretary, the Finance/Administration Manager and the Web-Master.

The discussion on temporary experts and consultants led to a conclusion that no new regulations were needed but that the text of Regulation 11 should be revised. Those delegations

willing to express their comments were kindly invited to do so by e-mail to the Argentine-Australian Contact Persons.

Closing of the Meeting

The Chairman highlighted the importance of the decision to split the work of the meeting into two groups. This enabled an effective use of the time available and the production of synergies between the two groups. He expressed his satisfaction for the work done. Having seen how close the delegates had come to consensus on the central issue of cost-sharing, he urged all the participants to accommodate their individual positions so as to favour the common good, which in this case is the removal of the remaining obstacles to the final establishment of the Secretariat.

The Chairman gave the floor to the delegation of Spain, which will host the next ATCM. The delegate of Spain congratulated participants on the results of this meeting and expressed the hopes for a successful meeting in Madrid. He also made some comments on the organisation of the forthcoming ATCM regarding the desirability of structuring the work of the ATCM by way of establishing a legal group and a policy group similar to what was done in Buenos Aires. Delegates suggested that the work on liability should take place in the second week and that the work on the Secretariat should begin immediately on the first week. The delegate from New Zealand reminded that in the final report of the Warsaw ATCM, the liability group was scheduled to meet on the first week. However, the great majority of the delegations expressed the view that it would be difficult to plan both the Secretariat work and the liability work during the first week.

Lastly, the Chairman thanked the Government of the Argentine Republic, the Chairman of the Committee of the Whole, all the delegations and the secretariat of the meeting for the very positive interaction and cooperation in bringing about a successful outcome of the meeting.

ANNEX 1 DRAFT MEASURE (2003)

ANTARCTIC TREATY SECRETARIAT

The Representatives,

Recalling the Antarctic Treaty and the Protocol to the Antarctic Treaty on Environmental Protection (the Protocol);

Recognizing the need for a Secretariat to assist the Antarctic Treaty Consultative Meeting (the ATCM) and the Committee for Environmental Protection (the CEP) in performing their functions;

[Recalling the elements for the Antarctic Treaty Secretariat contained in the Final Report adopted by the XVII ATCM].

Recalling Decision 1 (2001) of the XXIV ATCM on the establishment of the Antarctic Treaty Secretariat (the Secretariat) in Buenos Aires, Argentina.

Recommend to their Governments the following measure for approval in accordance with Article IX (4) of the Antarctic Treaty.

ARTICLE 1

Secretariat

The Secretariat shall constitute an organ of the ATCM. As such it shall be subordinated to the ATCM.

ARTICLE 2

Functions

The Secretariat shall perform those functions in support of the ATCM and the CEP, which are entrusted to it by the ATCM.

Under the direction and supervision of the ATCM, the Secretariat shall, in particular:

- A. Provide, with assistance from the host government, secretariat support for meetings held under the Antarctic Treaty and the Protocol and other meetings in conjunction with the ATCM. Secretariat support shall include:
 - i) Collation of information for ATCM / CEP meetings e.g. Environmental Impact Assessments and Management Plans;
 - ii) Preparatory work for and distribution of the meeting agendas and reports;
 - iii) Translation of meeting documents;
 - iv) Provision of interpretation services;
 - v) Copying, organizing and distributing meeting documents;
 - vi) Assisting the ATCM in drafting the meeting documents including the final report;
- B. Support intersessional work of the ATCM and the CEP by facilitating the exchange of information, organizing meeting facilities and providing other secretariat support as directed by the ATCM;
 - C. Facilitate and coordinate communications and exchange of information amongst Parties on all exchanges required under the Antarctic Treaty and the Protocol;
 - D. Under guidance from the ATCM, provide the necessary coordination and contact with other elements of the Antarctic Treaty System and other relevant international bodies and other organizations as appropriate;
 - E. Establish, maintain, develop and, as appropriate publish, databases relevant to the operation of the Antarctic Treaty and the Protocol;
 - F. Circulate amongst the Parties any other relevant information and disseminate information on activities in Antarctica:
 - G. Record, maintain and publish, as appropriate, the records of ATCM's and of other Meetings convened under the Antarctic Treaty and the Protocol;
 - H. Facilitate the availability of information about the Antarctic Treaty System;
 - I. Prepare reports on its activities and present them to the ATCM;
 - J. Assist the ATCM in reviewing the status of past Recommendations and Measures adopted under Article IX of the Treaty;
 - K. Under the guidance of the ATCM, take up responsibility of maintaining and updating an Antarctic Treaty System "Handbook";
 - L. Perform such other functions relevant to the purpose of the Antarctic Treaty and the Protocol as may be determined by the ATCM.

ARTICLE 3

Executive Secretary

The Secretariat shall be headed by an Executive Secretary who shall be appointed by the ATCM from candidates to be proposed by Consultative Parties.

The Executive Secretary shall appoint staff members and experts essential for the carrying out of the functions of the Secretariat. The Executive Secretary and staff shall serve in accordance with the procedures, terms and conditions set out in Staff Regulations.

[During the intersessional periods, the Executive Secretary shall consult in the manner to be prescribed in the Rules of Procedure].

ARTICLE 4¹⁰

Budget

The Secretariat shall operate in a cost effective manner.

The ATCM shall approve the budget of the Secretariat [by consensus].

[The Consultative Parties shall meet the expenses of the Secretariat as apportioned by the ATCM.]

The Consultative and Non Consultative Parties, in addition, may make voluntary contributions to the budget of the Secretariat.

Financial regulations are to be adopted by a Decision of the ATCM

ARTICLE 5

Legal Capacity and privileges and immunities

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 host State shall be provided for in the Headquarters Agreement hereby adopted and attached as Annex 1 to this Measure, to be concluded between the ATCM and the Argentine Republic.

The ATCM hereby authorizes the person who holds the office of the Chair to conclude the Headquarters Agreement on its behalf at the time this Measure becomes effective.

The Secretariat may exercise its legal capacity as provided for in Article 2 of the Headquarters Agreement only to the extent authorized by the ATCM. Within the budget approved by and in accordance with any other decision of the ATCM, the Secretariat is hereby authorized to contract, and to acquire and dispose of movable property in order to perform its functions as set out in Article 2 of this Measure.

The Secretariat may not acquire or dispose of immovable property or institute legal proceedings without the prior approval of the ATCM.

¹⁰ This Article was not discussed pending the deliberation in the Committee of the Whole.

ANNEX 2

DRAFT HEADQUARTERS AGREEMENT

BETWEEN

THE ANTARCTIC TREATY CONSULTATIVE MEETING AND

THE ARGENTINE REPUBLIC

The Antarctic Treaty Consultative Meeting (ATCM) and the Argentine Republic;

Convinced of the need to strengthen the Antarctic Treaty System;

Bearing in mind the special legal and political status of Antarctica and the special responsibility of the Antarctic Treaty Consultative Parties to ensure that all activities in Antarctica are consistent with the purposes and principles of the Antarctic Treaty; and its Protocol on Environmental Protection;

Having regard to Decision 1 (2001), Measure ...(2002) which provide for the establishment of a Permanent Secretariat of the Antarctic Treaty at Buenos Aires, Argentina;

Desiring to enable the Permanent Secretariat as an organ of the ATCM to fully and efficiently fulfill its purposes and functions;

Have agreed as follows:

ARTICLE 1. DEFINITIONS

For the purpose of this Agreement:

- a) 'Antarctic Treaty' or 'The Treaty' means the Antarctic Treaty adopted in Washington. on 1 December 1959;
- b) 'Appropriate Authorities' means the national, provincial, or local authorities of the Argentine Republic in accordance with the laws of the Argentine Republic:
- c) 'Archives' means all correspondence, documents, manuscripts, photographs, computer data storage, films, recordings and any other records, in paper, electronic or any other form, belonging to or held by the Secretariat;
- d) 'Committee for the Environmental Protection' or 'CEP' means the Committee established under Article 11 of the Protocol:
 - e) 'Delegates' means Representatives, Alternate Representatives, Advisers and any other persons who represent the States Parties;
- f) 'Executive Secretary' means the Executive Secretary appointed by the ATCM to head the Secretariat according to the instrument establishing the Secretariat;
- g) 'Expert' means a person performing short term or temporary projects on behalf of the Secretariat or participating in the work of or performing a mission on behalf of the Secretariat without necessarily receiving remuneration from the Secretariat, but does not include staff members;
- h) 'Government' means the Government of the Argentine Republic;
- i) 'Headquarters' means the premises, including buildings or parts of buildings and any land ancillary thereto, irrespective of ownership, occupied by the Secretariat for the performance of its official activities²;
- j) 'Official Activities' means all activities undertaken pursuant to the Treaty and the Protocol including the Secretariat's administrative activities;
- k) 'Protocol' means the Protocol on Environmental Protection to the Antarctic Treaty adopted at Madrid on 4 October 1991;
- 1) 'Secretariat' means the Secretariat of the Antarctic Treaty, established as a permanent organ of the ATCM;
- m) 'Staff member' means the Executive Secretary and all persons appointed for employment with the Secretariat and subject to its Staff Regulations, but does not include persons recruited locally and assigned to hourly rates of pay; and
- n) 'States Parties' means the States Parties to the Antarctic Treaty.

ARTICLE 2. LEGAL CAPACITY

The Secretariat as an organ of the ATCM has legal personality and capacity to perform its functions in the territory of Argentina. It has, in particular, the capacity to contract, to acquire and dispose of movable and immovable property, and to institute and be a party to legal

proceedings. The Secretariat may exercise its legal capacity only to the extent authorized by the ATCM.

ARTICLE 3. HEADQUARTERS

- 1. The Headquarters shall be inviolable and shall be under the full authority of the Secretariat.
- 2. The Government shall provide rent-free, in the City of Buenos Aires, Argentine Republic, suitable as the Headquarters.
- 3. The Government shall take all appropriate steps to protect the Headquarters against any intrusion or damage and to prevent any impairment of its dignity.
- 4. The Government shall arrange for the Headquarters to be supplied by the appropriate authorities with available public services, such as electricity, water, sewerage, gas, mail, telephone, telegraph, drainage, garbage collection and fire protection, on terms no less favourable than those enjoyed by the Government.
- 5. Through the ATCM, the Secretariat shall make known to the Government the need for any changes to the location or extent of its permanent premises or archives and of any temporary occupation of premises for the performance of its official activities. Where any premises other than those arranged under Article 4(2) of this Agreement are used or occupied by the Secretariat for the performance of its official activities, such premises shall, with the concurrence of the Government, be accorded the status of official premises of the Secretariat. Where any permanent or temporary changes are made to the premises of the Secretariat in accordance with this paragraph, any additional premises occupied by the Secretariat shall not necessarily be provided by the Government rent-free.
- 6. Without prejudice to the terms of this Agreement, the Secretariat shall not permit the Headquarters to become a refuge from justice for persons avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued.¹¹
- 7. The Appropriate Authorities may enter the Headquarters to carry out their duties only with the consent of the Executive Secretary and under the conditions agreed by him/her. The Executive Secretary's consent shall be deemed to have been given in the case of fire or other exceptional emergencies, which may necessarily require immediate protective action.

ARTICLE 4. IMMUNITIES

- 1. Subject to what is provided for in the Treaty, the Protocol, or this Agreement the activities of the Secretariat in Argentina shall be governed by the Argentine domestic law consistent with international law.
- 2. Within the scope of its official activities the Secretariat, as an organ of the ATCM and its property, premises and assets shall have immunity of jurisdiction in judicial and administrative proceedings except:
 - b) in respect of any contract for the supply of goods or services and any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation;

¹¹ Note to the translator into Spanish: "Sin perjuicio de lo estipulado en este Acuerdo, la Secretaría no permitirá que su Sede se convierta en refugio de personas contra quienes se haya expedido una orden de detención, extradición o deportación"

- c) in respect of a civil action by a third party for death, damage or personal injury arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Secretariat to the extent the compensation is not recoverable from insurance;
- d) in respect of a motor vehicle offence involving a motor vehicle belonging to, or operated on behalf of, the Secretariat;
- e) in the event of a claim for salaries, wages or other emoluments owed by the Secretariat;
- f) in respect of a counter-claim directly connected with proceedings initiated by the Secretariat;
- g) in respect of claims made on real estate situated on Argentine territory; and
- h) in respect of actions based on the Secretariat's as heir or beneficiary of property situated on Argentine territory.
- 3. The Secretariat's property, premises and assets, wherever situated, shall have immunity from any form of restrictions or controls such as requisition, confiscation, expropriation or attachment. They shall also be immune from any form of administrative or judicial constraint provided that motor vehicles belonging to or operated on behalf of the Secretariat shall not be immune from administrative or judicial constraint when temporarily necessary in connection with the prevention of, and investigation into, accidents involving such motor vehicles.

ARTICLE 5. OBJECTIVE AND WAIVER OF PRIVILEGES AND IMMUNITIES

- 1. Privileges and Immunities provided for in this Agreement are granted to ensure the unimpeded functioning of the ATCM and the Secretariat and the complete independence of the persons to whom they are accorded. They are not granted for the personal benefit of the individuals themselves
- 2. Except as provided in para. 3 of this Article, the privileges and immunities provided in this agreement may be waived by the ATCM. They should be waived in a particular case where the privilege and immunity in question would impede the course of justice and can be waived without prejudice for the purpose for which they are accorded.
- 3. In the case of Delegates, their privileges and immunities provided in this agreement may be waived by the States Parties which they respectively represent.

ARTICLE 6. ARCHIVES

The Archive shall be inviolable wherever they are.

ARTICLE 7. THE TREATY FLAG AND EMBLEM

The Secretariat shall be entitled to display the Treaty flag and emblem on the premises and means of transport of the Secretariat and of the Executive Secretary.

ARTICLE 8. EXEMPTION FROM DIRECT TAXES

Within the scope of its official activities, the Secretariat, its property, premises and assets, and its income (including contributions made to the Secretariat as the result of any agreement arrived at by the States Parties) shall be exempt from all direct taxes including income tax, capital gains tax and all State taxes. The Secretariat shall be exempt from municipal taxes with the exception of those which constitute payment for specific services rendered in accordance with Article 4(4) of this Agreement.

ARTICLE 9. EXEMPTION FROM CUSTOMS AND EXCISE DUTIES AND VALUE ADDED TAX

- 1. The property used by the Secretariat necessary for its official activities (including the ATCM publications, motor vehicles and items for official entertainment purposes) shall be exempt from all customs and excise duties.
- 2. The Secretariat shall be exempt from the Value Added Tax, or other similar taxes, for services and goods, including publications and other information material, motor vehicles and items for official entertainment purposes, if the services and goods so purchased by the Secretariat are necessary for its official use.

ARTICLE 10. EXEMPTION FROM RESTRICTIONS AND PROHIBITIONS

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

ARTICLE 11. RE-SALE

Goods which have been acquired or imported by the Secretariat to which exemptions under Article 9 of this Agreement apply and goods acquired or imported by the Executive Secretary or other staff members to which the exemptions under Article 16 or Article 17 of this Agreement apply, shall not be given away, sold, lent, hired out or otherwise disposed of in Argentina, except under conditions agreed in advance with the Government.

ARTICLE 12. CURRENCY AND EXCHANGE

The Secretariat shall be exempt from currency and exchange restrictions, including those in respect of funds, currency and securities received, acquired, held or disposed of. The Secretariat may also operate without restrictions bank or other accounts for its official use in any currency, and have them transferred freely within Argentina or to any other country.

ARTICLE 13. COMMUNICATIONS

- 1. With regard to its official communications and the transfer of all its documents, the Secretariat shall enjoy treatment not less favourable than that generally accorded by the Government to any other government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails and all forms of telecommunications.
- 2. The Secretariat may employ all appropriate means of communication, including messages in code or cipher. The Government shall not impose any restriction on the official communications of the Secretariat or on the circulation of its publications.
- 3. The Secretariat may install and use radio transmitters only with the consent of the Government.
- 4. Official correspondence and other official communications of the Secretariat are not subject to censorship and will enjoy all the guarantees established by the National Constitution and the Argentine legislation.

ARTICLE 14. PUBLICATIONS

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

ARTICLE 15. PRIVILEGES AND IMMUNITIES OF DELEGATES

- 1. Delegates of the States Parties shall enjoy, during their stay in Argentina for exercising their official functions, the privileges and immunities existing for diplomatic agents as established in the Vienna Convention on Diplomatic Relations, signed on April 18, 1961.
- 2. The provisions of the preceding paragraph shall be applicable irrespective of the relations existing between the governments which the persons referred to represent and the Argentine Government, and are without prejudice to any additional immunities to which such persons may be entitled.
- 3. The privileges and immunities described in paragraph 1 of this Article shall not be accorded to any delegate of the Government or to any Argentine or foreign citizen with permanent residence in the Argentine Republic.
- 4. The Government shall treat delegates with all due respect and shall take all necessary measures to prevent encroachment on their person, freedom and dignity. Where it appears that an offence may have been committed against a delegate, steps shall be taken in accordance with Argentine legal proceedings to investigate the matter and to ensure that appropriate action is taken with respect to the prosecution of the alleged offender.

ARTICLE 16. EXECUTIVE SECRETARY

In addition to the privileges, immunities, exemptions and facilities provided for in Article 17 of this Agreement, the Executive Secretary, unless he/she is an Argentine citizen or a permanent resident in Argentina, shall enjoy the privileges, immunities, exemptions and facilities to which a diplomatic agent in the Argentine Republic is entitled, including privileges, immunities, exemptions and facilities in respect of the members of their family which form a part of the household.

ARTICLE 17. STAFF MEMBERS

Staff members of the Secretariat and as applicable the members of their families forming a part of the household:

- a) shall have, even after the termination of their service with the Secretariat, immunity from suit and any other legal process or judicial request in respect of acts and things done by them in the exercise of their official functions, including words written or spoken. This would also apply to the Executive Secretary without regard to his nationality or permanent residence;
- b) the immunity set out in the previous paragraph shall not, however, apply in the case of a motor vehicle offence committed by such a staff member or the Executive Secretary nor in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by him or her to the extent the compensation is not recoverable from insurance;
- c) shall be exempt from any obligations in respect of military service and all other kinds of mandatory service, unless they are Argentine citizens or permanent residents in the Argentine Republic;
- d) shall be exempt from the application of laws relating to the registration of aliens and immigration;
- e) unless they are citizens of or permanently resident in the Argentine Republic, they shall be accorded the same exemption from currency and exchange restrictions as is accorded to an official of comparable rank from an international agency in the Argentine Republic;

- f) unless they are citizens of or permanently resident in the Argentine Republic, they shall when taking up their post in the Argentine Republic for the first time, be exempt from customs duties and other such charges (except payments for services) in respect of import of furniture, motor vehicles and other personal effects in their ownership or possession or already ordered by them and intended for their personal use or for their establishment; such goods shall be imported within six months of a staff member's first entry into the Argentine Republic but in exceptional circumstances an extension of this period shall be granted by the Government; goods which have been acquired or imported by staff members and to which exemptions under this sub-paragraph apply shall not be given away, sold, lent, hired out, or otherwise disposed of except under conditions agreed in advance with the Government; furniture and personal effects may be exported free of duties when leaving the Argentine Republic on the termination of the official functions of the staff member;
- g) shall be exempt from all taxes on income received from the Secretariat. This exemption shall not apply to staff members who are residents in the Argentine Republic for services rendered in Argentina,
- h) shall have similar repatriation facilities, including such facilities in respect of a spouse and dependent relatives, as are accorded to representatives of international agencies in times of international crisis; and
- i) shall have personal inviolability with respect to any form of personal arrest or detention or seizure of their personal baggage unless they are citizens or permanent residents of Argentina.

ARTICLE 18. EXPERTS

In the exercise of their functions experts shall enjoy the following privileges and immunities to the extent necessary for the carrying out of their functions, including while travelling in Argentina to that effect:

- a) immunity from legal process in judicial and administrative proceedings or from judicial request in respect of acts and things done in the exercise of their official functions, including words written or spoken; this immunity shall not, however, apply in the case of a motor vehicle offence committed by such experts nor in the case of civil or administrative proceedings arising out of death, damage or personal injury caused by a motor vehicle belonging to or driven by him/her to the extent the compensation is not recoverable from insurance; such immunity shall continue after the expert's function in relation to the Secretariat have ceased;
- b) inviolability for all their official papers and documents as well as other official materials, which are related to the performance of the functions of the Secretariat;
- c) unless they are citizens of or permanently resident in the Argentine Republic, the same exemption from currency and exchange restrictions as is accorded to a representative of a foreign Government on a temporary mission in Argentina on behalf of that Government; and
- d) unless they are citizens of or permanent residents of the Argentine Republic, immunity from personal arrest and detention and from attachment of personal luggage.

ARTICLE 19. VISAS

1. All persons having official business with the Secretariat, namely (a) Delegates and members of their families forming a part of the household), (b) staff members of the Secretariat (and any members of their families forming a part of the household), and c) the experts referred to in article 18 shall have the right of entry into and exit from the Argentine Republic.

2. The Government shall take all measures necessary to facilitate the entry into the Argentine territory, the sojourn on that territory and the exit there from of all persons mentioned in the preceding paragraph. Visas, where required, shall be granted without wait or delay, and without fee, on production of a certificate that the applicant is a person described in the preceding paragraph. In addition, the Argentine Government will facilitate for such persons travel within the territory of the Argentine Republic.

ARTICLE 20. COOPERATION

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

ARTICLE 21. NOTIFICATION OF APPOINTMENTS, IDENTITY CARDS

- [1 The Secretariat shall notify the Government when a staff member takes up or relinquishes his or her post or when an expert starts or finishes a project or mission.
- 2. The Secretariat shall twice a year send to the Government a list of all experts and staff members, members of the family, which form a part of their household accompanying them in the Argentine Republic. In each case the Secretariat shall indicate whether such persons are Argentine citizens or permanently resident in the Argentine Republic.
- 3. The Government shall issue to all staff members and experts as soon as practicable after notification of their appointment, a card bearing the photograph of the holder and identifying him/her as a staff member or expert as the case may be. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The Secretariat shall return the card to the Government when the staff member or expert relinquishes his/her duties. The spouse and dependent children under the age of eighteen years of staff members shall also be issued with an identity card, which shall be returned to the Government when the staff member relinquishes his/her duties.]
- [1. The ATCM shall notify the Government of the appointment of an Executive Secretary and the date when he or she is to take up or relinquish the post.
- 2. The Secretariat shall notify the Government when a staff member or takes up or relinquishes his or her post or when an expert starts or finishes a project or mission.
- 3. The Secretariat shall twice a year send to the Government a list of all experts and staff members, the members of their families forming a part of the household accompanying them in the Argentine Republic. In each case the Secretariat shall indicate whether such persons are Argentine citizens or permanently resident in the Argentine Republic.
- 4. The Government shall issue to all staff members and experts as soon as practicable after notification of their appointment, a card bearing the photograph of the holder and identifying him/her as a staff member or expert as the case may be. This card shall be accepted by the appropriate authorities as evidence of identity and appointment. The Secretariat shall return the card to the Government when the staff member or expert relinquishes his/her duties. The members of their families forming a part of the household shall also be issued with an identity card, which shall be returned to the Government when the staff member relinquishes his/her duties.]

ARTICLE 22. CONSULTATION

The Government and the Secretariat as an organ of the ATCM shall consult at the request of either of them concerning matters arising under this Agreement. If any such matter is not promptly resolved, the Secretariat shall refer it to the ATCM.

ARTICLE 23. AMENDMENT

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

ARTICLE 24. SETTLEMENT OF DISPUTES

Any dispute arising out of the interpretation or application of this Agreement shall be settled by consultation, negotiation or other mutually acceptable method, which may include resort to binding arbitration

ARTICLE 25. ENTRY INTO FORCE AND TERMINATION.

This Agreement shall enter into force upon signature.

ATCM, whichever comes first].

This Agreement may be terminated by a joint decision of the Argentine Republic and the ATCM. In the event of the Headquarters being moved from Argentina, this Agreement shall, after a period reasonable required for such transfer and the disposal of the property of the Secretariat in Argentina, cease to be in force. In either event, the date of which the Agreement terminates shall be confirmed by an exchange of notes between the Government and the Secretariat.

DONE in them equally author		in all working languages of the ATCM being all of
		ANNEX 3
		DECISION(2003)
The Representativ	ves	
Recalling Decision Secretariat) in Bus		on the establishment of the Antarctic Treaty Secretariat (the Argentina.
Recalling also Me	easure	(2003) (the Measure) of the XXVI ATCM.
DECIDE:		

2) That the Secretariat shall fulfill, to the fullest extent possible, the functions identified in Article 2 of the Measure prioritising work in accordance with guidance by the ATCM.

1) That the Secretariat shall act, on a provisional basis, in accordance with articles 1, 3, 4 (par.) and 5 (par. 3 and 4) of the Measure until it becomes effective [or until the XXVIII

- 3) To apply provisionally, to the fullest extent possible, the Staff Regulations and Financial Regulations as adopted by Decision _____ (2003). 12
- 4) That the Secretariat shall be financed by voluntary contributions which should be made according to the proportions determined in Article 4 of the Measure _____ until it becomes effective.¹³
- 5) To accept the offer of the Argentine Republic, annexed to this Decision, to:
- i) grant legal capacity to the Secretariat as an organ of the ATCM following the adoption of this Decision, and
- ii) provisionally apply the Headquarters Agreement annexed to the Measure from the date of the notification to the depositary Government of the Antarctic Treaty that the Argentine constitutional requirements have been completed. After such notification is received by the Depositary Government, article 5 (par. 1) shall provisionally apply.

Annex 4

Draft Financial Regulations for the Antarctic Treaty Secretariat

Explanatory Notes:

<u>Underlined</u> text in the body of the document indicates text that Australia has included when amending the CCAMLR regulations for use by the Antarctic Treaty Secretariat. Similarly, the comments in boxes to the right of the document have been provided by Australia to assist consideration of this document.

Bold text in footnotes: indicates additional text that Parties have suggested be included.

General Comments Provided by Spain

Basically, the Draft reproduces the Financial regulations adopted by CCAMLR when this Organization was established in the eighties; only relatively minor modifications have been introduced to the text.

In order to evaluate this Draft and better understand the difficulties some ATCM Parties may have when dealing with the financial issue, it is useful to recall that CCAMLR Financial Regulations were designed taking into account that a "Standing Committee on Administration and Finance" would be set up. Both are mentioned in the CCAMLR Convention text. This text also fixes the procedure for approval of the different matters dealt with by CCAMLR.

On the other hand, the most important chapter in the annual CCAMLR budget is the one which corresponds to the Scientific Committee. This Committee takes up more than 50 % of the total budget of the Organisation. In this context, the setting up of special funds is important for the financing of activities which are not foreseen in the ordinary yearly budget.

This is a different situation from that of the Antarctic Treaty, whose text carries no mention to financial matters. The Treaty only defines the procedure for approval of the measures which it listes, among which no financing measures can be identified.

¹² This clause will be checked to identify certain clauses that will not be applicable.

¹³ This paragraph will be adjusted according to the agreement reached in the other Group.

It also has to be taken into account that the budget which is to be governed by the Draft Financial Regulations deals mainly whith the ordinary functioning of the Treaty Secretariat, and therefore the establishment of special funds is not relevant here.

In this framework, and due to the nature itself of ATCM, some Parties may not wholly understand the need, for example, of establishing a permanent Finance Committee, or otherwise the general complexity of the financial system of a Secretariat of this nature.

Consequently, it would be useful to consider the Draft "Financial Regulations" in accordance with the kind of Finance Committee we are looking to establish and therefore, to clarify and simplify as much as possible the articles of its text, incorporating into them those aspects which do not appear in the Antarctic Treaty text, such as a reference to the approval procedures of a budget.

The model which is most adjusted to the described requirements would be that of a set of Financial Regulations which would include the establishment of a Committee of finance and administration of a non permanent nature. The Regulations could then have either one of the following titles: "Rules for a Finance and Administration Committee" or: "Finance and Administration Regulations". Some international organisations have adapted their financial operations to a simpler scheme, like the one we have attempted to explain.

General Comments Provided by Japan

- (1) Japan considers the adoption of the budget by consensus in ATCM is of utmost importance. While this principle should be provided in the legal instrument establishing the Secretariat, we strongly support the provision in draft Regulation 3.7.
- (2) While Japan understands that this draft Regulations is based on that of CCAMLR, the reference to "members" or "non-members" (e.g. draft Regulations 5.1, 5.3, 5.4, 5.5, 5.6, 6.1, 6.2, 7.2, 10.2, 11.1, 11.6) should be deleted and replaced by "Consultative Parties," "non-Consultative Parties," or "Contracting Parties to the Antarctic Treaty," depending on the context.
- (3) Japan considers that the content of the Financial Regulations should be consistent with the content and the form of the legal instrument establishing the Secretariat. Since the latter instrument is still under negotiation, Japan confirms that the following comments and the pursuing discussion will not prejudice the content and/or the form of the legal instrument establishing the Secretariat.

FINANCIAL REGULATIONS

REGULATION 1 APPLICABILITY

1.1 These Regulations shall govern the financial administration of the Antarctic Treaty Secretariat(the Secretariat¹⁴) established under Measure _____(2003) of the Antarctic Treaty Consultative Meeting (the ATCM).

REGULATION 2 FINANCIAL YEAR

¹⁴ UK – Recommends deletion of text from line 2 "the Secretariat" to the end, and substitute "the Secretariat of the Antarctic Treaty, established as a permanent organ of the Antarctic Treaty Consultative Meeting (hereinafter referred to as "the Secretariat")...". This then brings the text in line with the draft Headquarters Agreement (Article 1 (1)).

2.1 The financial year shall be for 12 months commencing 1 April and ending 31 March, both dates inclusive.

REGULATION 3 THE BUDGET

- 3.1 A draft budget comprising estimates of receipts by the Secretariat and of expenditures by the Secretariat shall be prepared by the Executive Secretary for the ensuing financial year.
- 3.2 The draft budget shall include a statement of the significant financial implications for subsequent financial years in respect of any proposed work programs presented in terms of administrative, recurrent and capital expenditure.
- 3.3 The draft budget shall be divided by functions into items and, where necessary or appropriate, into sub-items.¹⁵
- 3.4 The draft budget shall be accompanied by details both of the appropriations made for the previous year and estimated expenditure against those appropriations, together with such information annexures as may be required by Parties or deemed necessary or desirable by the Executive Secretary. The precise form in which the draft budget is to be presented shall be prescribed by the ATCM.
- 3.5 The Executive Secretary shall submit the draft budget to all Parties of the ATCM at least 60 days prior to the ATCM, as provided for in Measure _____ (2003). ¹⁶At the same time, and in the same form as the draft budget, the Executive Secretary shall prepare and submit to all Parties of the ATCM a forecast budget for the subsequent financial year.
- 3.6 The draft budget and the forecast budget shall be presented in [Argentine peso]¹⁷¹⁸.
- 3.7 ¹⁹At each annual meeting, the ATCM shall adopt the budget for the Secretariat²⁰.²¹ The budget shall be treated as a matter of substance and decisions shall be taken by consensus. In

¹⁵ UK – It has already been decided (see the draft HQ Agreement) that the Secretariat will also provide secretarial support for the Committee for Environmental Protection (CEP). In many respects the CEP, as a technical advisory body, is analogous in its relationship to the ATCM as the Scientific Committee of CCAMLR is to the CCAMLR Commission. We believe that Rule 3 should indicate that the CEP should have a separate budget line (agreed by the ATCM). (Comment: The work of the CEP is growing. To reflect this, the effective work of the Committee might best be served by access to its own budget (though approved by the ATCM). Otherwise, each call for extra money from the CEP may require specific authorisation. A separate budget line would also require the Committee to plan its work programme (and estimate expenditure) more assiduously)

¹⁶ UK – Refer to the UK's comments on a Standing Committee under Regulation 4.4.

¹⁷ UK – Refer to the UK's comments on a Standing Committee under Regulation 4.4.

¹⁸ Japan – In relation to Regulations 3.6, 5.4 & 10.3 Japan notes that these regulations provide for a budget to be presented in Argentine peso.

Japan appreciates further explanation from the government of Argentina whether their domestic rules allow for budget in a currency other than their own.

Our experiences from other treaty budget formulations (notably those done in Swiss Francs) demonstrate that the exchange loss (or to a lesser extent exchange gain) poses a major problem in managing the finance of the treaty. This is especially true when the treaty foresees major part of income coming and expenditures done in the currency other than the budget currency (usually US dollars). Therefore, Japan considers that it is necessary to further examine these Regulations

¹⁹ Spain Recommends the inclusion of "The budget shall be treated as a matter of substance and decisions shall be taken by consensus". Prior to the sentence - At each annual meeting... for the Secretariat.

²⁰ UK – Recommends the inclusion of the additional text, "following advice from the [Standing Committee on Administration and Finance, or some other similar body] to be constituted by the ATCM". Refer also to the UK's comments under Regulation 4.4.

²¹ Spain — Recommends that inclusion of the following sentence at the end of this regulation, "In determining the size of the budget, the ATCM shall give due consideration to the principle of cost effectiveness" and to move the paragraph so modified to 3.1.

determining the size of the budget, the ATCM shall adhere to the principle of cost-effectiveness.

REGULATION 4 APPROPRIATIONS

- 4.1 The appropriations adopted by the ATCM shall constitute an authorisation for the Executive Secretary to incur obligations and make payments for the purposes for which the appropriations were adopted.
- 4.2 ²²Unless the ATCM decides otherwise, the Executive Secretary may also incur obligations against future years before appropriations are adopted when such obligations are necessary for the continued effective functioning of the Secretariat, provided such obligations are restricted to administrative requirements of a continuing nature not exceeding the scale of such requirements as authorised in the budget of the current financial year. In other circumstances the Executive Secretary may incur obligations against future years only as authorised by the ATCM. All forward commitments to be identified in annual budgets presented to the ATCM.
- 4.3 Appropriations shall be available for the financial year to which they relate. At the end of the financial year all appropriations shall lapse. Commitments remaining undischarged against previous appropriations at the end of a financial year shall be carried over and be included in the budget for the next financial year, unless the ATCM otherwise decides.
- 4.4²³ ²⁴ All transfers must be reported by the Executive Secretary to the next annual meeting of the ATCM. The Executive Secretary may make transfers within each of the main appropriation lines of the approved budget. The Executive Secretary may also make transfers between such appropriation lines [up to limits, which the ATCM may set as appropriate] [up to [10] [20] % of the appropriation lines]. The transfers authorised under this regulation shall not result in overall increase in the budget above that approved by the ATCM, nor will they result in an increased expenditure in future years.
- * Refers to the Chairman of the most recent ATCM meeting
- 4.5 The ATCM shall prescribe the conditions under which unforeseen and extraordinary expenses may be incurred.

REGULATION 5 PROVISION OF FUNDS

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²² Japan - Requests further clarification on this provision. Especially, we would appreciate the explanation on practical operation of the phrase "not exceeding the scale of such requirements as authorised in the budget of the current financial year." We would also appreciate further explanation on the practical significance of the last sentence: "All forward commitments to be identified in annual budgets presented to the ATCM."

²³ UK — Regulation 4.4 provides for delegation in respect of certain payments. We question whether the Chairman of a recent ATCM would necessarily be in a position to authorise payments of this nature. In particular, whether for example senior Ministers who had acted as Chairman would have the capacity or time to make such determinations. For this reason we support the suggested replacement for this paragraph though with the amendment in line 2 of replacing "guidelines" with "procedures".

Japan Considers that this provision, on one hand, lacks essential element that the transfers between and within appropriation lines should be within the overall budget adopted by the ATCM, and, on the other hand, is so protracted that it is difficult to understand. Thus, Japan suggests the following alternative, which is modelled after other conventions' financial rules.

[&]quot;Suggested New 4.4: The Executive Secretary may make transfers within each of the main appropriation lines of the approved budget. The Executive Secretary may also make transfers between such appropriation lines [up to limits, which the ATCM may set as appropriate] [up to [10] [20] % of the appropriation lines]. The transfers authorised under this regulation shall not result in overall increase in the budget above that approved by the ATCM."

- 5.1 Each Consultative Party shall contribute to the budget in accordance with the scale determined in Decision _____(2003)²⁵.
- 5.2 On approval of the budget for a financial year, the Executive Secretary shall send a copy thereof to all Parties notifying them of their contributions and requesting them to remit their contributions due. A Consultative Party (CP) Member of the ATCM that fails to pay its contributions for two consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions in the ATCM (this includes Measures, Decisions and Resolutions of the ATCM)²⁶ ²⁷.
- 5.3 All contributions shall be made in [Argentine peso or the equivalent amount in United States dollars]²⁸.
- 5.4 ²⁹ Contributions from States that become Consultative Parties after the beginning of the financial period shall be made *pro rata temporis* for the balance of the financial period.
- 5.5³⁰ Except in the first financial year when contributions shall be paid within 90 days of the end of the first ATCM meeting, contributions shall be due for payment on the first day of the financial year (i.e. the due date) and shall be paid not later than 60 days after that date. The ATCM has the authority to permit extensions to the due date of up to 90 days for individual Partieswho are unable to comply with this regulation due to the timing of the financial years of their governments³¹. However, in the case referred to in Regulation 5.5(a), contributions by a

²⁵ Measure or decision?

²⁶ UK - Although borrowed directly from Regulation 5(3) of CCAMLR, this Regulation could be made clearer: (a) by inserting the word "**full**" before contributions, and (b) clarifying when the period of default is initiated. Our view is that a Party is in default from the period when it first fails to pay in full its contributions i.e. based on the existing draft Regulation 5.6, 61 days after 1 January. Thereafter, a party that has been in default for more than two consecutive years shall not have the right to participate in the taking of decisions by the ATCM including Measures, Decisions and Resolutions. Such a right should be withheld until the outstanding contributions, plus interest incurred, are paid in full. Moreover, a Party that is in default should pay interest accruing on the unpaid contributions. We recommend that the interest rate be pegged to that relating to the General Account of the Secretariat.

²⁷ Japan - Regarding the second sentence, Japan understands that this provision comes from the Financial Regulation of CCAMLR and that the CCAMLR in Article 19 paragraph 6 expressly stipulates the sanction when one fails to pay its contribution. On the other hand, under the Antarctic Treaty, the Consultative Parties have the right to participate (and to vote) in ATCMs (Article 9), but there is no express provision as to its suspension. The current draft of the legal instrument establishing the Secretariat does not provide for such suspension either. From a legal point of view, Japan considers doubtful whether a legal right under the Antarctic Treaty can be amenable to suspension by a non-legally binding instrument, such as a decision (supposing that this Financial Regulation will be adopted by a decision).

Thus, Japan prefers deletion of the second sentence of Regulation 5.3.

²⁸ Spain – Proposes to add at the end of the sentence "....or the equivalent amount in United States dollars **or Euros**".

²⁹-Japan considers this and the following provision can be made much simpler, modelling after other Conventions' financial rules. Japan also considers that it is sufficient to provide the due date.

Thus, Japan suggests the following alternative to Regulation 5.5 and 5.6.

[&]quot;Suggested New 5.5: Contributions from States that become Consultative Parties after the beginning of the financial period shall be made pro rata temporis for the balance of the financial period."

[&]quot;Suggested New 5.6: Except in the first financial year of the establishment of the Secretariat, contributions shall be due for payment on the first day of the financial year. In the first financial year of the establishment of the Secretariat, contributions shall be paid within 90 days of the end of the first ATCM after entering into force of the Measure (?) (2003).

³⁰ This point will be further discussed.

³¹ UK - The UK does not support the derogation proposed here. The effect of which would mean that certain Parties are provided with an extension to the deadline for payment. Unless such Parties are prepared to also contribute the interest accruing on their contributions then the net effect of such a derogation is a loss to the Secretariat of revenue, and in effect a financial gain to the defaulters. If certain Parties, for reasons of their fiscal timetable, have difficulty

new Party shall be made within 90 days following the date on which its accessionbecomes effective. If payment is made after the due date in United States dollars³², the net payment received by the Secretariat shall be equivalent to the amount of Argentine pesos payable on the due date.

5.6 The Executive Secretary shall acknowledge pledges and contributions immediately upon receipt. The Executive Secretary shall report to each meeting of the ATCM on the receipt of contributions and the position of arrears..³³

REGULATION 6 FUNDS

- 6.1 ³⁴(a) There shall be established a General Fund for the purpose of accounting for the income and expenditure of the Secretariat;
- (b) Contributions paid by Parties under Regulation 5.1 and miscellaneous income to finance general expenditure shall be credited to the General Fund;
- (c) Advances made by Parties shall be carried to the credit of the Parties which have made such advances.
- 6.2 (a) ³⁵There shall be established a Contingency Fund for the purpose of receiving funds and making payments for purposes not foreseen in the regular budget of the Secretariat.

in paying to the deadline stipulated then consideration should be given either to the appropriateness of the Financial Year as set out in Regulation 2.1., or to increasing the 60 day window for payment. We prefer to see a unified system, rather than some Parties operating to one set of Rules, other Parties being granted derogation from such Rules.

³² Spain – Proposes to add in the last sentence: "...If payment is made after the due date in United States dollars **or Euros**".

Japan Notes that in all cases of contribution to Conventions' budget, Japan requests receipt to be sent as soon as the secretariat confirms the transfer of money. Thus, Japan considers that it is necessary for the secretariat to acknowledge the receipt of the contributions soon after they receive them. Thus, Japan suggests the following. "Suggested New 5.7: The Executive Secretary shall acknowledge all pledges and contributions and shall inform the Contracting Parties once a year, as a report to the ATCM if appropriate, of the status of pledges and payments of contributions."

³⁴ Japan – In relation to Regulations 6.1, 6.2, 7.1 & 7.3 Japan considers that, in principle, all expenditures by the secretariat must be made within the budget approved by the ATCM. Japan considers that all foreseeable income must be provided to the General Fund and all foreseeable expenditures must be made from the same Fund. Japan therefore does not favour creating a "contingency fund" and allowing the Executive Secretary to expend money from this "extra-budgetary" resources (even with the restriction of "unforeseen" expenditures).

Japan also notes that, in other Conventions' financial rules, the surplus from the previous financial year, contributions from new Parties, and other unearmarked voluntary contributions usually go to the General Fund as a part of income subject to the budgetary approval of the governing body, in this case, the ATCM.

In order to cope with an unforeseen event, as provided in other Conventions' financial rules, it may be appropriate to provide for a "working capital reserve" within the General Fund.

Thus, Japan suggests the following:

- "Suggested New 6.1: There shall be established a General Fund for the purpose of accounting for the income and expenditure of the Secretariat. The appropriations of the General Fund shall be financed from:
- (a) the contributions paid by Consultative Parties and Non-consultative Parties under Regulation 5.1, including additional contributions and from any contributions from new Consultative Parties; (b) Staff Assessment Levy under Regulation 5.2;
- (c) the contributions paid by other Non-consultative Parties and States not parties to the Antarctic Treaty, other governmental, intergovernmental and non-governmental organizations and other sources; and (d) any uncommitted appropriations from the previous financial years."
- "Suggested New 6.2: Within the General Fund there shall be maintained a working capital reserve at a level to be determined from time to time by ATCM. The purpose of the working capital reserve shall be to ensure continuity of operations in the event a temporary shortfall of cash. Drawdowns from the working capital reserve shall be restored from contributions as soon as possible."

³⁵ Spain recommends that Regulation 6.2(a) and 6.2 (b) and 6.2(c) be deleted and to modify 6.3 as following:

- (b) Any cash surplus in the General Fund at the close of a financial year that is not required to meet undischarged commitments in terms of Regulation 4.3 shall be forwarded to the Contingency Fund. This provision shall not apply at the end of the first financial year when surplus funds other than those resulting from contributions by new Parties may be carried over into the following financial year;
- (c) Where contributions are received from new Parties after the commencement of the financial year and such funds have not been taken into account in formulating the budget these shall also be placed in the Contingency Fund.
- 6.3 Trust and Special Funds may be established by the Secretariat at the direction of the ATCM for the purpose of receiving funds and making payments for purposes not covered by the General or Contingency funds of the Secretariat.

REGULATION 7 OTHER INCOME

- 7.1 ³⁶All income other than contributions to the budget under Regulation 5 and that referred to in Regulation 7.3 below, shall be classified as Miscellaneous Income and credited to the Contingency Fund. The use of Miscellaneous Income shall be subject to the same financial controls as activities financed from regular budget appropriations.
- 7.2 Voluntary contributions above and beyond Parties' budget contributions may be accepted by the Executive Secretary provided that the purposes for which the contributions are made are consistent with the policies, aims and activities of the ATCM³⁷. Voluntary contributions offered by non-Parties may be accepted, subject to agreement by the ATCM that the purposes of the contribution are consistent with the policies, aims and activities of the ATCM.
- 7.3 Voluntary contributions shall be treated as Contingency Funds under Regulation 6.2.

REGULATION 8 CUSTODY OF FUNDS

- 8.1 The Executive Secretary shall designate a bank or banks in which the funds of the Secretariat shall be kept and shall report the identity of the bank or banks so designated to the ATCM.
- 8.2 (a) The Executive Secretary may make short-term investments of moneys not needed for the immediate requirements of the Secretariat. Such investments shall be restricted to securities and other investments issued by institutions or Government bodies with current ratings, provided by a rating body approved by the Secretariat's auditor, indicating a strong capacity to pay. The details of investment transactions and income derived shall be reported in the documents supporting the budget;
- (b) With regard to moneys held in Contingency, Trust or Special Funds for which use is not required for at least 12 months, longer-term investments may be authorised by the ATCM

[&]quot;Trust and Special funds, **including a contingency fund**, may be established **by the ATCM with the object of receiving** funds and making payments for the purposes not covered **by the regular budget of the Secretariat**".

³⁶ Japan – In relation to Regulations 7.1, 7.2 & 7.3 Japan considers that the establishment of a contingency fund is inappropriate and that the special provision for "miscellaneous income" is unnecessary. Japan also considers that any other voluntary contribution or income which will not be provided to the General Fund (e.g. because the provider specifically earmarked the fund for certain purpose) should go to Trust or Special Funds as stipulated in Regulation 6.3.

³⁷ UK - Reference is made to the "policies, aims and activities" of the ATCM, we suggest that this should instead read "are consistent with the Antarctic Treaty and Environmental Protocol and instruments adopted under them".

provided such action is consistent with the terms under which the moneys were lodged with the Secretariat. Such investments shall be restricted to securities and other investments issued by institutions or Government bodies with current ratings, provided by a rating body approved by the Secretariat's auditor, indicating a strong capacity to pay.

8.3 Income derived from investments shall be credited to the Fund from which the investment was made.

REGULATION 9 INTERNAL CONTROL

- 9.1 The Executive Secretary shall:
- (a) establish detailed financial rules and procedures after consultation with the external auditor to ensure effective financial administration and the exercise of economy in the use of funds;
- (b) cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the goods or services have been received and that payment has not previously been made;
- (c) designate officers who may receive moneys, incur obligations and make payments on behalf of the Secretariat; and
- (d) maintain and be responsible for internal financial control to ensure:
- (i) the regularity of the receipt, custody and disposal of all funds and other financial resources of the Secretariat;
- (ii) the conformity of obligations and expenditures with the appropriations adopted by the annual meeting; and
- (iii) the economic use of the resources of the Secretariat.
- 9.2 No obligations shall be incurred until allotments or other appropriate authorisations have been made in writing under the authority of the Executive Secretary.
- 9.3 The Executive Secretary may propose to the ATCM, after full investigation by him/her, the writing off of losses of assets, provided that the external auditor so recommends. Such losses shall be included in the annual accounts.
- 9.4 Tenders in writing for equipment, supplies and other requirements shall be invited by advertisement, or by direct requests for quotation from at least three persons or firms able to supply the equipment, supplies, or other requirements, if such exist, in connection with all purchases or contracts, the amounts of which exceed \$2,000 (Argentine pesos). For amounts exceeding \$500 (Argentine pesos), but less than \$2,000 (Argentine pesos), competition shall be obtained either by the above means or by telephone or personal enquiry. The foregoing rules, shall, however, not apply in the following cases:
- (a) where it has been ascertained that only a single supplier exists and that fact is so certified by the Executive Secretary;
- (b) in case of emergency, or where, for any other reason, these rules would not be in the best financial interests of the Secretariat, and that fact is so certified by the Executive Secretary.

REGULATION 10 THE ACCOUNTS

- 10.1 The Executive Secretary shall ensure that appropriate records and accounts are kept of the transactions and affairs of the Secretariat and shall do all things necessary to ensure that all payments out of the Secretariat's moneys are correctly made and properly authorised and that adequate control is maintained over the assets of, or in the custody of, the Secretariat and over the incurring of liabilities by the Secretariat.
- 10.2 The Executive Secretary shall submit to the Parties, not later than 31 March immediately following the end of the financial year, annual financial statements showing, for the financial year to which they relate:
- (a) the income and expenditure relating to all funds and accounts;
- (b) the situation with regard to budget provisions, including:
- (i) the original budget provisions;
- (ii) the approved expenditure in excess of the original budget provisions;
- (iii) any other income;
- (iv) the amounts charged against these provisions and other income;
- (c) the financial assets and liabilities of the Secretariat;
- (d) details of investments;
- (e) losses of assets proposed in accordance with Regulation 9.3.

The Executive Secretary shall also give such other information as may be appropriate to indicate the financial position of the Secretariat. These financial statements shall be prepared in a form approved by the ATCM after consultation with the external auditor.

- 10.3 The accounting transactions of the Secretariat shall be recorded in the currency in which they took place but the annual financial statements shall record all transactions in Argentine pesos.
- 10.4 Appropriate separate accounts shall be kept for all Contingency, Special and Trust Funds.
- 10.5 The annual financial statements shall be submitted by the Executive Secretary to the external auditor in accordance with Article ? of ATCM Measure ? (2003) at the same time as they are submitted to Parties under paragraph 2 of this Regulation³⁸.

REGULATION 11 EXTERNAL AUDIT

11.1 The ATCM shall appoint an external auditor who shall be the Auditor-General or equivalent statutory authority from a Member of the ATCM and shall serve for a term of two years with the possibility of re-appointment. The ATCM will ensure respect for the external auditor's independence of the Secretariat, and the Secretariat's staff, fix the terms of office, appropriate funds to the external auditor and may consult him/her on the introduction or amendment of any financial regulations or detailed accounting methods as well as on all matters affecting auditing procedures and methodology.

³⁸ Japan - Notes that the current draft of the legal instrument establishing the Secretariat does not contain a provision relating to external auditor.

- 11.2 The external auditor or a person or persons authorised by him/her shall be entitled at all reasonable times to full and free access to all accounts and records of the Secretariat relating directly or indirectly to the receipt or payment of moneys by the Secretariat or to the acquisition, receipt, custody or disposal of assets by the Secretariat. The external auditor or a person or persons authorised by him/her may make copies of or take extracts from any such accounts or records.
- 11.3 If required by the ATCM to perform a full audit, the external auditor shall conduct his/her examination of the statements in conformity with generally accepted auditing standards and shall report to the ATCM on all relevant matters, including:
- (a) whether, in his/her opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether, in his/her opinion, the income, expenditure and investment of moneys and the acquisition and disposal of assets by the Secretariat during the year have been in accordance with these Regulations; and
- (d) observations with respect to the efficiency and economy of the financial procedures and the conduct of business, the accounting system, internal financial controls and the administration and management of the Secretariat.
- 11.4 If required by the ATCM to perform a review audit, the external auditor shall review the statements and accounting controls in operation. The Executive Secretary shall report to the ATCM whether anything has come to his/her attention which would cause him/her to doubt whether:
- (a) the statements are based on proper accounts and records;
- (b) the statements are in agreement with the accounts and records; or
- (c) the income, expenditure and investment of moneys and the acquisition and disposal of assets by the Secretariat during the year have been in accordance with these Regulations.
- 11.5 The Executive Secretary shall provide the external auditor with the facilities he/she may require in the performance of the audit.
- 11.6 The Executive Secretary shall provide to the Parties of the ATCM a copy of the audit report and the audited financial statements within 30 days of their receipt.
- 11.7 The ATCM shall, if necessary, invite the external auditor to attend discussions on any item under scrutiny and consider recommendations arising out of his/her findings.

REGULATION 12 ACCEPTANCE OF ANNUAL FINANCIAL STATEMENTS

12.1 The ATCM shall, following consideration of the audited annual financial statements and audit report submitted to its Parties under Regulation 11.5 of these Regulations, signify its acceptance of the audited annual financial statements or take such other action as it may consider appropriate.

REGULATION 13 INSURANCE

13.1 The Secretariat may take out suitable insurances with a reputable financial institution against normal risks to its assets.

REGULATION 14 GENERAL PROVISION

- 14.1 These Regulations may be amended by a Decision of the ATCM.
- 14.2 Where the ATCM is considering matters which may lead to a decision which has financial or administrative implications, it shall have before it an evaluation of those implications from the Executive Secretary.

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ANNEX 5

STAFF REGULATIONS

Introductory Note:

Bold text in footnotes: indicates additional text that Parties have suggested be included *Italics* in footnotes: these are comments added by Australia when compiling Parties' comments

REGULATION 1 PREAMBLE

1.1 These Staff Regulations establish the fundamental principles of employment, regulate the working relationships and establish the rights and duties of members of the staff of the Antarctic Treaty Secretariat, and the Executive Secretary (the Staff members) who render their services in and receive remuneration from ⁴⁰the Antarctic Treaty Secretariat (the Secretariat).

REGULATION 2 DUTIES, OBLIGATIONS AND PRIVILEGES

- 2.1 Staff members are international civil servants. Upon accepting their appointments they shall pledge themselves to discharge their duties faithfully and to conduct themselves with the interests of the ATCM in mind.⁴¹
- 2.2 ⁴²For the purposes of these regulations the term 'dependant' shall include only ⁴³. ⁴⁴
- (a) any unsalaried child, who is born of, or adopted by, a staff member, his/her spouse, or their children, who is below the age of eighteen years and who is dependent on a staff member or his/her spouse for main and continuing support;

³⁹ Need to have a clause for entry into force when Measure establishing the Secretariat becomes effective.

⁴⁰ United Kingdom (UK) - line 5. Delete from "the Secretariat of,,,,," to the end and substitute: "**the Secretariat of the Antarctic Treaty, established as a permanent organ of the Antarctic Treaty Consultative Meeting (ATCM), hereinafter referred to as "the Secretariat."**.. This then brings the text in line with the draft HQ Agreement, Article 1 (1).

⁴² Spain - Supports the Argentine proposal, in the sense that the description of the term "dependant" should appear in the HQ Agreement, in article 17 of which a mention is made to "…the members of their families forming part of the household". This point has a somewhat sociological nature and adds difficulty to the approval of the Staff Regulations. In the end, it is a matter which is more within the competence of the HQ country.

⁴³ UK – Recommends deletion of the word "only" in line 1 of Regulation 2.2.

⁴⁴ Many Parties suggested that this paragraph should be moved to Regulation 5.

- (b) any child fulfilling the conditions laid down in paragraph (a) above, but who is between eighteen and twenty-five years of age and is receiving school or university education or vocational training;
- (c) any handicapped child who is dependent on a staff member or his/her spouse for main and continuing support;
- (d) any other child who is given a home by and is dependent on a staff member or his/her spouse for main and continuing support;
- (e) any person related by blood or marriage, [or any spouse or partner], for whose main and continuing support a staff member or his/her spouse [or partner] is legally responsible. 4546
- 2.3 Staff members shall at all times conduct themselves in a manner in keeping with the nature of the ATCM. They shall always bear in mind the loyalty, discretion and tact imposed on them by their international responsibilities in the performance of their duties. They shall avoid all actions, statements or public activities which might be detrimental to the ATCM and its aims.
- 2.4 Staff members are not required to renounce either their national feelings or their political or religious convictions.
- 2.5 In the performance of their duties, staff members may neither seek nor accept instructions from any government or authority other than the ATCM⁴⁷⁴⁸⁴⁹.
- 2.6 Staff members shall observe maximum discretion regarding official matters and shall abstain from making private use of information they possess by reason of their position. Authorisation for the release of information for official purposes shall lie with the ATCM or the Executive Secretary, as the case may require.
- 2.7 ⁵⁰Staff members shall, in general, have no employment other than with the Secretariat. In special cases, staff members may accept other employment, provided that it does not interfere with their duties in the Secretariat, and that prior authorisation by the Executive Secretary has been obtained. The ATCM's prior authorisation shall be obtained⁵¹ in respect of the Executive Secretary.
- 2.8 No staff member may be associated in the management of a business, industry or other enterprise, or have a financial interest therein if, as a result of the official position held in the Secretariat, he/shemay benefit from such association or interest.
- 2.9 Ownership of non-controlling stock in a company shall not be considered to constitute a financial interest within the meaning of Regulation 2.8.

⁴⁵ NZ – Recommends that the whole of paragraph 2.2 should be moved to Regulation 4 – Classification of staff. Endorsed by the UK. The UK notes that the draft HQ Agreement does not provide a precise definition of this issue. Retention of this text may therefore be helpful.

⁴⁶ Argentina: Prefers not to include any definition of "dependant" in the Staff Regulations and to deal with this issue exclusively in the HQ Agreement.

⁴⁷ NZ – Recommends including 'or the Executive Secretary' after ATCM

⁴⁸ Arg.- Considers that the Executive Secretary should be mentioned instead of the ATCM.

⁴⁹ UK – Recommends including "**or the Executive Secretary as appropriate**". (The Executive Secretary will receive his his/her instructions from the ATCM, other staff Members from the Executive Secretary).

⁵⁰ UK - Distinction here needs to be made between full-time and part-time staff. Secretariat staff such as translators' etc may well fall into the latter category. As a norm such staff are very likely to have/want employment outside the Secretariat. Recommend insertion of "Full-time" in front of "staff members".

Secretariat. Recommend insertion of "Full-time" in front of "staff members".

51 UK – Recommends inclusion of the following after "been obtained". "These provisions do not relate to part-time staff who work less than [hrs] per week in the Secretariat's employ"

2.10 Staff members ⁵²shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement ⁵³ between the Argentine Republic and the Secretariat ⁵⁴, (pursuant to Article? of Measure? (2002)).

REGULATION 3⁵⁵ HOURS OF WORK

- 3.1 The normal working day shall be eight hours, Monday to Friday, for a total of forty hours per week.
- 3.2 The Executive Secretary shall establish the working hours, and may alter them for the benefit of the ATCM, as circumstances may require.

REGULATION 4 CLASSIFICATION OF STAFF⁵⁶

4.1 Staff members shall be classified in either of the two following categories:

(a) Executive Category

Positions of high responsibility of an executive nature. These posts will be filled by appropriately qualified professionals, preferably with University⁵⁷ qualifications or the equivalent. Staff members in this category will be recruited internationally but only among citizens of Antarctic Treaty Consultative Parties (ATCP)⁵⁸.

(b) General Staff Category

All other staff, including translators, technical, ⁵⁹administrative and auxiliary positions. Such staff members shall be recruited in Argentina from among citizens of Antarctic Treaty Consultative Parties (ATCP).

4.2 Persons employed under Regulation 11 shall not be classified as staff members.

REGULATION 5 SALARIES AND OTHER REMUNERATION⁶⁰

⁶¹5.1 The scale of salaries for staff members in the executive category shall be established in US dollars according to the corresponding scales of salaries which would apply to officials of the United Nations Secretariat⁶² employed in Argentina and shall be paid in Argentine currency⁶³ ⁶⁴.

⁵² Arg.- Recommends adding "and experts", a category already recognized in the HQ Agreement.

⁵³ Argentina – Recommends that this paragraph should read, "Staff members shall enjoy the privileges and immunities to which they are entitled under the Headquarters Agreement".

⁵⁴ UK – Recommends substituting "ATCM' for "Secretariat".

⁵⁵ Many delegations suggested that Regulations 4 and 11 should be treated together.

⁵⁶ Arg.- Recommends the inclusion of "**Experts**" as 4.1.b, for the same reasons stated in the previous note.

⁵⁷ UK – Recommends the inclusion of "or **Professional**" after "University" and the deletion of "or the equivalent".

⁵⁸ UK – Recommends the substitution of "**nationals**" for "citizens" in both 4.1 (a) and (b). This provision will however need consideration against Regulation 5.1. of the draft Financial Regulations. If it is decided that non-Consultative Parties will contribute to the budget, then we see no reason why the nationals of such Parties should not be eligible for employment in the Secretariat.

⁵⁹ UK – Recommends that the reference to "interpreters" be retained. The UK notes that in Regulation 11.2 reference is made to <u>additional</u> interpreters. There cannot be additional interpreters if there are none in the first place!

⁶⁰ Some Parties recommended to include art. 2.2 on the definition of "dependants" in this Article.

⁶¹ NZ –General comment – are UN salary and conditions the best to use? On the basis that these staff regulations are being developed for positions which will be located in Argentina only, is it not possible to develop something specifically for the Antarctic Treaty Sec – eg a base salary appropriate to living conditions in Argentina, plus an allowance recognising the international context of the position? A comparison as to how reasonable UN

- 5.2 Staff members in the general category shall, in principle⁶⁵, be paid according to an appropriate level of the United Nations Development Program salaries scales in Argentina,
- 5.3 The type of allowances available to staff members in the executive category shall, in principle⁶⁶, be those allowances in force in the United Nations. The scale of allowances shall be established in US dollars according to the corresponding scales of allowances which would apply to officials of the United Nations Secretariat in Argentina and shall be paid in Argentine currency. However, education allowances for each dependent child shall not be paid:
- (a) in respect of children of Argentine staff members;
- (b) in respect of attendance at an Argentine public (State) school;
- (c) for attendance at a University in Argentina;
- (d) for correspondence courses or private tuition;
- (e) when schooling does not require regular attendance at an education institution;
- (f) in respect of education expenses covered from scholarship grants or subsidies from other sources.
- 5.4 Except for the maximum figure for education allowance, changes in salaries and allowances applied in the United Nations Secretariat shall be applied to the salaries and allowances of staff members in the executive category. The ATCM shall review the system of applying these changes to salaries and allowances periodically.
- 5.5 ⁶⁷The promotion of the Executive Secretary from one salary scale to another requires the prior approval of the ATCM. Promotion of all other executive staff will be approved by the Executive Secretary ⁶⁸.
- 5.6 The salaries of staff members in the executive category shall begin at Step 1 of the United Nations classification at which they are appointed. They shall remain at that level for at least the first year of employment.

salaries/conditions would be may be to look at what salary/conditions international companies provide for overseas nationals in Argentina. What about foreign embassies? Another possibility may be to develop guidelines and then give the Exec Sec the authority to negotiate executive staff salaries and conditions within the guidelines. There may be sufficient cost savings in moving away from UN conditions to pay a consultant to look at this issue?

⁶² Australia – Use of UN salary scales will significantly increase the operating costs of the Secretariat and result in a significant disparity between the salary received by Executive Officers and General Services staff. It is suggested that, as a general principle, the level of remuneration provided should be sufficient to attract suitably qualified personnel from nationals of all Consultative Parties. That could be achieved by paying staff in the Executive Officer category at a level equivalent to a similar position in their own country. UK – The result of the Australian proposal could be to introduce wide disparity between the salaries paid to similar graded staff in the Executive grade of the Secretariat. This could set up animosities.

⁶³ NZ – Recommends that Executive category salaries be paid in US dollars. Australia – Supports this proposal as it may reduce significant budget fluctuations caused by changes in the exchange rate. This situation has occurred with the CCAMLR Secretariat.

⁶⁴ Spain - The salaries should be paid in the national currency of the HQ country and not, as N-Z is proposing, in US dollars. The objective is to avoid unbalancing the annual current budget. This happened in CCAMLR, where salaries and allowances are paid in US dollars, during two consecutive years, due to the devaluation of the Australian currency.

⁶⁵ UK – Recommends the deletion of "in principle".

⁶⁶ UK – Recommends the deletion of "in principle".

 $^{^{67}}$ UK – Recommends that regulations 5.5 and 5.6 be switched around i.e. one appoints into a job, prior to promotion.

⁶⁸ UK - Given the logic of Regulation 5.10 (which we endorse) we believe a similar procedure should relate to Regulations 5.5 i.e. that "**Promotion of all other executive staff will be by approval of the ATCM, on the proposal of the Executive Secretary**".

- 5.7⁶⁹⁷⁰ The Secretariat shall levy from the salaries of staff members in the executive category an amount for Staff Assessment. Staff Assessment rates shall be those in force in the United Nations.
- 5.8 The Executive Secretary shall make arrangements to ensure that any staff member in the executive category who is subject to national income tax is reimbursed tax paid on his/her⁷¹ salary. Such arrangements shall be made only on the basis that the direct costs of reimbursement are paid by the staff member's home country.

Staff members in the general category will be responsible for the payment of national income tax on their salaries.

5.9⁷² Staff members in the executive category shall receive annual increments, subject to satisfactory performance of their duties⁷³. Increments shall cease once the staff member has reached the highest step in the grade in which he/she⁷⁴ is serving.

Staff members in the general category shall receive annual increments in accordance with the conditions of their contract.

- 5.10 Only in very special cases, on the proposal of the Executive Secretary and with the approval of the ATCM, may a staff member in the Executive category be appointed at a salary higher than Step 1 of the relevant category.
- 5.11 Staff members in the executive category are not entitled to overtime pay or compensatory leave.
- 5.12 Staff members in the general category required to work more than 40 hours during one week will be compensated:
- (a) with compensatory leave equivalent to hours of overtime performed; or
- (b) by remuneration per overtime hour, to be estimated at the rate of time and a half, or if the additional time is worked on a Sunday, or on holidays listed in Regulation 7.8, at the rate of double time.
- 5.13 The ATCM shall pay duly justified representation expenses incurred by the Executive Secretary in the performance of his/her⁷⁵ duties within the limits prescribed annually in the budget.

REGULATION 6 RECRUITMENT AND APPOINTMENT

⁶⁹ NZ – Queried what the Staff Assessment levy is. *The CCAMLR Secretariat have advised that the Staff* Assessment Levy is collected from staff as an income tax and kept in the Commission as income. The rates charged are UN rates for the Professional Staff and Australian tax rates for others. This latter is complex as it requires interaction with other Australian tax factors. The matter is further complicated by the fact that Australian employees remain subject to Australian taxes, so double taxation is avoided by recovering such taxes from the Australian Department of Foreign Affairs and Trade.

Suggestion to delete this paragraph

⁷¹ NZ – Recommends adding '/her' following he

⁷² NZ – Recommends adding 'Subject to satisfactory performance' at the start of this sentence.

⁷³ Australia – It is recommended that staff should only receive annual increments if they have adequately performed their jobs in accordance with standards determined by the Executive Secretary, or if they have met agreed performance targets.

74 NZ — Recommends adding '/she' following he

⁷⁵ NZ Recommends adding '/her' following his

- 6.1 In accordance with Article ? of Measure ? (2002), the ATCM shall appoint an Executive Secretary and shall establish the remuneration and such other entitlements as it deems appropriate. The Executive Secretary's term of office shall be for four years and the Executive Secretary shall be eligible for reappointment for one additional term. The total length of employment may not exceed eight years^{76 77}.
- 6.2 In accordance with Article, _____ of Measure____ (2002) the Executive Secretary shall appoint, direct, and supervise staff members⁷⁸. The paramount consideration in the appointment, transfer or promotion of staff members shall be the necessity for securing⁷⁹ the highest standards of efficiency, competence and integrity. Due consideration should be given to recruiting staff on as wide a geographical basis as possible among Parties.
- 6.3 Offers of appointment to the Secretariat are subject to the persons selected undergoing a medical examination and presenting a certificate stating that they have no medical condition which might prevent them from performing their duties, or which might endanger the health of others.
- 6.4 Upon selection, each staff member shall receive an offer of appointment stating:
- (a) that the appointment is subject to the staff regulations applicable to the category of appointment in question, and to changes which may be duly made in such regulations from time to time;
- (b) the nature of the appointment;
- (c) the date on which the staff member is required to commence duty;
- (d) the period of appointment, the notice required to terminate it and the period of probation;
- (e) for executive staff, the category, level, commencing rate of salary and the scale of increments and the maximum salary attainable; and for general staff the category at which they will be employed and the salary to be paid;
- (f) the allowances attached to the appointment:
- (g) any special terms and conditions which may be applicable.
- 6.5 Together with the offer of appointment, staff members shall be provided with a copy of these Regulations. Upon acceptance of the offer staff members shall state in writing that they are familiar with and accept the conditions set out in these Regulations.
- 6.6 Staff members in the executive category may be required to undergo further medical examination from time to time as determined by the Executive Secretary or the ATCM as the case may require. The medical examinations shall be at the expense of the Secretariat.

REGULATION 7 LEAVE

7.1 Staff members shall be entitled to annual leave at the rate of two workdays for each completed month of service. Annual leave is cumulative, but at the end of each calendar year, not more than 30^{80} workdays may be carried over to the following year⁸¹.

 $^{^{76}}$ Arg.- Prefers to deal with the term of office of the ES in the Decision/Measure

⁷⁷ Spain - Supports the Argentine proposal that the mandate of the Executive Secretary should basically be a decision for ATCM. This matter should be introduced in the Measure establishing the Secretariat, and in the Decision that will put in place the Secretariat for an interim period, a mention could be made to this specific point of the Measure

⁷⁸ UK – Recommends inserting "**experts and temporary personnel**' after staff members.

⁷⁹ UK – Recommends replacing "necessity for securing" with "need to secure".

⁸⁰ UK – Recommends decreasing carry-over leave to 10 working days at maximum (At present the annual allowance is more than a years entitlement of leave). The proposed entitlement is for 2 days leave per month worked. i.e. 24 days per year but we believe it more appropriate to round this up to five working weeks (25 days) but retain the pro-

- 7.2 The taking of leave shall not cause undue disruption to normal Secretariat operations. In accordance with this principle, leave dates shall be subject to the needs of the ATCM. Leave dates shall be approved by the Executive Secretary who shall, as far as possible, bear in mind the personal circumstances, needs and preferences of staff members.
- 7.3 Annual leave may be taken in one or more periods.
- 7.4 Any absence not approved within the terms of these Regulations shall be deducted from annual leave.
- 7.5 Staff members who, upon termination of their appointment, have accumulated annual leave which has not been taken shall receive the cash equivalent estimated on the basis of the last salary received to a limit of 30 days.
- 7.6 After 18 months of service the Secretariat shall, in accordance with Regulations 9.3 and 9.4, pay travel expenses to the staff member's home country on annual leave for internationally recruited staff members and their dependants. Following this, home leave shall be granted at two-year intervals provided that:
- (a) dependants who benefit from this grant have resided at Buenos Aires for at least 6 months prior to travel;
- (b) it is expected that staff members will return to the Secretariat to continue rendering their services for a minimum additional period of 6 months.
- 7.7 The possibility of combining travel to home country on leave with official travel in Secretariat service may also be considered provided the functions of the Secretariat are not disadvantaged.
- 7.8 Staff shall be entitled to the holidays celebrated traditionally in Buenos Aires, i.e.: Fixed Holidays

1 January New Year's Day

Good Friday

Easter Sunday

01 May National Holiday 25 May National Holiday 9 July National Holiday

8 December Immaculate Conception

25 December Christmas Day

Moveable Holidays

02 April National Holiday 20 June National Holiday 17 August National Holiday 12 October National Holiday

rata arrangement for two days per month for periods of less than a year. Otherwise staff may have the inconvenience of working 1 day in an otherwise week of holidays. This regulation should therefore read: "Staff members shall be entitled to 25 days annual leave during each working year of service, or for periods of less than a full calendar year at the rate of two work days for each month of service..."

⁸¹ NZ – It is suggested that this is a very generous leave allowance and that 20 days per annum (plus statutory holidays) would be more appropriate. UK – does not support this proposal.

Holy Thursday

7.9 If under special circumstances members of the staff are required to work on one of the aforementioned days, or if any one of the above holidays falls on a Saturday or Sunday, the holiday shall be observed on another day to be set by the Executive Secretary, who shall take into account the efficient functioning of the Secretariat.

REGULATION 8 SOCIAL SECURITY

8.182 It is a condition of employment that each staff member will contribute to a recognised retirement fund and have adequate medical, hospital, life and disability insurance cover to the satisfaction of the Executive Secretary. Such insurance cover shall include adequate provision for dependants.

For staff in the Executive category the Secretariat shall pay two-thirds of the total contribution to the retirement fund and of the insurance premiums, up to the maximum percentage currently applied in the United Nations Secretariat to the total of the staff member's salary and salary related allowances⁸³. Such payment shall be by way of reimbursement upon the production of receipts, or shall be paid direct together with the employee's contribution. Staff members in the general category shall be responsible for the full payment of contributions to their retirement fund and insurance premiums.

8.2 [Reserved]

- 8.3 Staff members shall not be granted sick leave for a period of more than three consecutive days and more than a total of seven working days in any calendar year without producing a medical certificate.
- 8.4 Staff members shall be granted certified sick leave not exceeding 12 months in any four consecutive years. The first six months shall be on full salary and the second six months on half salary, except that no more than four months on full salary shall normally be granted in any period of 12 consecutive months. ⁸⁴
- 8.5 After one year of employment in the Secretariat staff members shall be entitled to maternity⁸⁵ leave. On the basis of medical advice that the confinement will probably take place within six weeks, staff members shall be entitled to be absent from duty until eight weeks after confinement⁸⁶. During this period staff members shall receive full pay and corresponding allowances.

⁸² NZ – It is suggested that it should be left to the employee to decide what they require, particularly in terms of retirement investments and life and disability cover. Depending on medical/hospital services in Argentina the Secretariat could cover medical/hospital insurance.

⁸³ Australia – It is suggested that the contribution that the Secretariat pays towards staff members' retirement funds and insurance premiums should be determined by the ATCM, for instance by setting a quantum against individual salaries.

NZ – It is suggested that this is very generous – in NZ the statutory requirement is 5 days per annum. An alternative paragraph could read 'Staff members shall be granted 10 days certified sick leave per annum, which may be accumulated from one year to the next to a maximum of 8 weeks.

⁸⁵ NZ – Recommends that 'maternity' be replaced with '**parental'**. UK – Does not support this proposal, however, does see virtue in parental! leave for fathers, and suggests this should be set at 10 working days.

⁸⁶ NZ - Recommends that this sentence should read 'On the basis of medical advice that the confinement will probably take place within six weeks, staff members shall be entitled to be absent from duty **for** eight weeks'.

[INSERT NEW PARAGRAPH]⁸⁷

- 8.6 In the event of death of a staff member following illness or surgery not resulting from an accident covered by the appropriate insurance, the right to salary, allowances and other corresponding benefits shall cease on the day on which death occurs, unless the deceased leaves dependants, in which case these shall be entitled to mortality allowances⁸⁸ and return travel and removal expenses to country of origin or former residence at the expense of the Secretariat.
- 8.7 Eligibility of the⁸⁹ dependants of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's death.
- 8.8 The above mortality allowance for death shall be calculated in accordance with the following scale: 90

Months of Net Base Pay Years of Service Salary Following Death Less than 3 years

3 months

3 years and more, but less than 7 years

4 months

7 years and more, but less than 9 years

5 months

9 years and more

6 months

8.9 The Secretariat shall pay for shipment of the staff member's body from the place of death to the place designated by the next of kin.

REGULATION 9 TRAVEL

- 9.1 ⁹¹All official travel shall be authorised by the Executive Secretary in advance within the limits of the budget, and the itinerary and travelling conditions shall be those best suited for maximum effectiveness in the fulfilment of duties assigned.
- 9.2⁹² With regard to official travel, a travel allowance shall be paid in advance for fares⁹³, accommodation, and daily living expenses. , For staff members in the executive category it will

⁸⁷ NZ – It is recommended that an additional paragraph be inserted in relation to long-term sickness benefits as follows, 'In the event of long term sickness, which prevents a staff member from continuing in their position with the Secretariat, the staff member and dependents shall be entitled to return travel and removal expenses to country of origin or former residence at the expense of the Secretariat.' UK – Concurs with this recommendation.

⁸⁸ NZ – The need for mortality allowances is queried – isn't this what life insurance is for? It's not as if this is a high risk UN posting. Payment of the balance of the staff member's annual leave and accrued sick leave could be paid.

⁸⁹ NZ – In relation to termination of services due to long term illness this paragraph could be amended to read, 'Eligibility of the **staff member or the** dependents of a deceased staff member for the payment of return travel and removal expenses shall lapse if the travel is not undertaken within six months of the date of the staff member's **termination of employment due to sickness or** death'.

⁹⁰ NZ – Recommends that paragraph 8.8 in relation to mortality allowance be deleted

⁹¹ UK – Recommends the inclusion of a statement indicating that "Staff members may be required to undertake travel, including international travel, on behalf of the Secretariat".

be generally consistent with United Nations⁹⁴ practice, and for staff members in the general category it will be generally consistent with UNDP practice in Argentina.

- 9.3 Economy class shall be utilised, wherever feasible, for air travel. 95
- 9.4 First class may be utilised for land travel, but not for travel by sea or air.
- 9.5 Following completion of a duty journey, staff members shall repay any travel allowances to which, in the event, they were not entitled. Where staff members have incurred expenses above and beyond those for which travel allowances have been paid, they shall be reimbursed, against receipts and vouchers, as long as such expenses were necessarily incurred in pursuit of their official duties.
- 9.6 On taking up an appointment in the Executive Category staff members shall be eligible for:
- (a) payment of economy class air fares (or equivalent) and travel allowance⁹⁶ for themselves, their spouses and dependants to Buenos Aires;
- (b) an Installation Grant⁹⁷ calculated⁹⁸ on the basis of the prevailing United Nations rate;
- (c) payment of removal costs, including the shipment of personal effects and household goods from place of residence to Buenos Aires, subject to a maximum volume of 30 cubic metres or one international standard shipping container;

[NEW PARAGRAPH]99

(d) payment or reimbursement of sundry other expenses related to relocation, including insurance of goods in transit and excess baggage charges subject to the prevailing relevant United Nations rules. Such payments shall be subject to prior approval by the Executive Secretary.

⁹² NZ – Queried whether UN travel allowances/conditions are the best approach? – with a small secretariat, an "actual and reasonable" approach could be used.

⁹³ UK – It is suggested that a more cost-effective mechanism would be for (at least) air fares to be paid by the Secretariat (rather than advance payment to individual staff members). In such a way the Secretariat may be able to negotiate special concessionary rates – perhaps aligned to Argentine Government rates.

⁹⁴ Australia – It is recommended that the rates of travel allowance be commensurate with local conditions, possibly set in parity with rates paid to public servants nationally.

NZ – Recommends inclusion of following text at the end of this sentence, 'except that for international air travel of more than 9 hours, business class may be utilised at the discretion of the Executive Secretary'.
NZ – Recommends that 'allowance' be replaced with 'expenses'

⁹⁷ NZ – Queried what this grant is for. *Information from the United Nations web site indicates that an Assignment Grant is 'to provide staff members with a reasonable cash amount at the beginning of an assignment or transfer to a duty station. It is the total compensation payable by the Organization towards:*

¹⁾ The initial extraordinary costs incurred by the staff member and hishis/her/her family members as a result of an appointment or reassignment;

²⁾ Any pre-departure expenses that the staff member may incur as a result of having to relocate to a new duty station.

ELIGIBILITY The assignment grant is normally payable to staff members at the Professional and higher categories appointed under the 100 or 200 series of the Staff Rules, who proceed on authorized travel, upon appointment or reassignment, to a duty station for a period of service expected to be at least one year's duration (It is not payable in the case of mission service). The amount paid for each staff member is Daily Subsistence Allowance (DSA) x 30 days plus an additional 50% of DSA x 30 days for each dependent'.

⁹⁸ Australia – It is recommended that the rate of the installation grant should be determined by the ATCM and not based on a UN rate.

⁹⁹ NZ – Recommends insertion of a new paragraph after 9.6(c) to read, 'hotel accommodation for the first two weeks in Buenos Aires'

9.7 Staff members who, in the course of their duty, are required to use private motor vehicles for official travel purposes shall, with the prior authorisation of the Executive Secretary, be entitled to receive a reimbursement of the reasonable costs involved as determined by the Executive Secretary¹⁰⁰. The costs associated with normal daily travel to and from the place of work shall not be reimbursed.

REGULATION 10 SEPARATION FROM SERVICE

- 10.1 Staff members may resign at any time upon giving three months notice or such lesser period as may be approved by the Executive Secretary (in the case of staff other than the Executive Secretary) or the ATCM in the case of the Executive Secretary.
- 10.2 In the event of a staff member resigning without giving the required notice the Executive Secretary (in the case of staff members other than the Executive Secretary) or the ATCM in the case of the Executive Secretary reserves the right to decide whether repatriation expenses or any other allowance shall be paid.
- 10.3 Appointment of staff members may be terminated upon prior written notice at least three months in advance, by the Executive Secretary when he/shedeems this to be for the benefit of the efficient functioning of the Secretariat due to restructuring of the Secretariat or if he/she considers that the staff member does not give satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service.
- 10.4 In the event of separation from service with the Secretariat¹⁰¹, executive staff members shall be compensated at a rate of one month base pay for each year of service¹⁰², beginning the second year, unless the cause of termination has been gross dereliction of duties imposed in Regulation 2.

In the event of involuntary termination of the appointment of a general staff member, he/she shall be paid the outstanding amount of his/her contract except when the Executive Secretary considers that the staff member has not given satisfactory service, fails to comply with the duties and obligations set out in these Regulations, or is incapacitated for service.

- 10.5 On separation from service, an executive staff member shall, subject to Regulation 10.6 below, be entitled to the following:
- (a) payment of economy class air fares (or equivalent) to the staff member's country of origin or former residence, for the staff member and dependent members of his/her family;
- (b) payment of removal costs, including the shipment of personal effects and household goods from place of residence in Buenos Aires to the country of origin or former residence, subject to a maximum volume of 30 cubic metres or one international shipping container;
- (c) a repatriation allowance generally consistent with United Nations practice 103, 104.

¹⁰⁰ UK – It is suggested that the reimbursement for the use of motor cars should be at a set rate (e.g. akin to the Argentine Government rate of reimbursement) rather than the matter being left to the discretion of the Executive Secretary. *Note: Mileage allowance for use of private vehicles is not paid by the Argentine Government.*

¹⁰¹ NZ – Recommends the inclusion of 'due to restructuring or incapacitation'

¹⁰² NZ – Recommends that the text following this point be replaced with, 'to a maximum of 6 months'

¹⁰³ Australia – It is recommended that the rates of repatriation allowance be determined by the ATCM, instead of being based on UN practice

¹⁰⁴ NZ – Recommends the deletion of paragraph 10.6(c)

- 10.6 At the discretion of the Executive Secretary, the right to the repatriation expenses provided for in Regulation 10.5 may be cancelled or reduced appropriately if:
- (a) less than one 105 year has elapsed between the date of taking up the appointment and the date of separation from service;
- (b) the reason for separation from service was termination of employment due to gross dereliction of duty;
- (c) more than six months has elapsed between the staff member's separation from service and his/her return to his/her country of origin or former residence;
- (d) less than six months has elapsed since the staff member last visited his/her country of origin or former residence on home leave at the expense of the Secretariat; or
- (e) the staff member has applied for or received status as a permanent resident of Argentina.

REGULATION 11 TEMPORARY PERSONNEL UNDER CONTRACT¹⁰⁶

- 11.1 The Executive Secretary may contract temporary personnel necessary to discharge special duties of a short term nature in the service of the Secretariat. Short term shall be defined as a contract lasting less than six months. Such personnel shall be classified as additional help and may be paid on an hourly basis.
- 11.2 Persons in this category may include additional¹⁰⁷ translators, interpreters, typists, and other persons contracted for meetings, as well as those whom the Executive Secretary contracts for a specific task. Whenever possible, persons resident in Argentina shall be utilised in such cases¹⁰⁸.

REGULATION 12 APPLICATION AND AMENDMENT REGULATIONS

- 12.1 Any doubts arising from application of these Regulations shall be resolved by the Executive Secretary following consultation with the ATCM.
- 12.2 All matters not foreseen in these Staff Regulations shall be brought to the attention of the ATCM by the Executive Secretary.
- 12.3 Subject to the provisions of the Convention¹⁰⁹, these Regulations may be amended by the ATCM in accordance with its Rules of Procedure.

4/4/2003 3:47 PM

¹⁰⁵ NZ – Recommends that one year be changed to '**two years**'

¹⁰⁶ Arg.- Considers that there should a reference to the applicable law to this contracts.

¹⁰⁷ UK – Notes the reference here to <u>additional</u> interpreters whereas in Regulation 4.1 (b) reference to interpreters has been deleted.

¹⁰⁸ UK – Does not support retention of the last sentence of this paragraph. This formula would not be appropriate of cost-effective for persons contracted by the Secretariat to work at an ATCM or other meeting being held outside Argentina. Australia – Supports the deletion of the final sentence.

Argentina. Australia – Supports the deletion of the final sentence.

109 UK – Reference to the "Convention" is inappropriate here, but should not be substituted by the "Antarctic Treaty". This text should more simply read: "These regulations may be amended by...".

ANNEX 6

MEASURE

(language for Article 4)

Each Consultative Party shall contribute to the budget of the Secretariat. [One half] of the budget shall be contributed equally by all Consultative Parties. [The other half] of the budget shall be contributed by the Consultative Parties based on the extent of their national Antarctic activities. [The latter may take] [takes] [, taking] into account the capacity to pay of each Consultative Party.

The ATCM may amend the proportion in which these two criteria shall apply and the scale of contributions by means of a Decision. The initial scale and the method to calculate the resulting shares is contained in Decision (2003).

Any Contracting Party may make a voluntary contribution at any time.

ANNEX 7

DECISION (2003)

APPORTIONING CONTRIBUTIONS TO THE ANTARCTIC TREATY SECRETARIAT

The Representatives,

Noting the references in paragraph 4.3 of Measure ____ (2003) to the contribution of Parties to the budget of the Antarctic Treaty Secretariat; and

Noting further that a part of the budget will be comprised of the Parties' contributions apportioned on a scale determined by the ATCM [reflecting their national Antarctic activities, taking into account their capacity to pay];

Decide that:

- 1. the scale of such apportioned contributions shall be as described in the Schedule to this Decision;
- 2. the Schedule may be varied by a Decision of the ATCM.
- 3. this Decision shall become operative on the date on which Measure ____ (2003) shall become effective.

SCHEDULE

SCALE OF APPORTIONED CONTRIBUTIONS

- 1. The initial scale of apportioned contributions will reflect the five categories of annual fees paid to the Scientific Committee on Antarctic Research (SCAR) by its members as of 1 January 2003, which is listed in Annex 1.
- [2. Each Party may change the initial category in which they are classified by notification to the Depositary Government within two months of the adoption of this Decision. Determinations of category shall be valid for three years; after this period, a Party may change its election by notification to the Secretariat at least six month before the ATCM preceding the financial year in which the change is to take effect. The above mentioned notifications will be accompanied by supporting documentation.]
- 3. The actual shares to be paid are calculated as follows:
 - a. Differentiation between the Categories is achieved by the following multipliers:

Category	Multiplier
Category A	3,6
Category B	2,8
Category C	2,2
Category D	1,6
Category E	1 (base rate)

- b. For the purpose of contributions to the Secretariat, the base rate shall be calculated as follows:
- (i) identify the size of the part of the Budget to be apportioned differentially between the Parties
- (ii) find the total number of multiples of the Base Rate by multiplying each Party's rate by the multiplier indicated in the table above, and then adding all multiples.
- (iii) divide the figure from subparagraph (i) by the figure derived from subparagraph (ii).
- c. The variable contribution of a Party shall be the amount obtained by multiplying the base rate calculated in paragraph 3.b. by the multiplier in paragraph 3.a.
- 4. The total contribution of each Party shall be the sum of a) the amount obtained by dividing the equal shares part of the budget by the number of Consultative Parties, and b) the amount calculated in paragraph 3.c.

ANNEX 8

Current scale of SCAR contributions

a .	D	
L Category A:	Puggio I hitad States	
Category A.	Russia, United States	

Category B:	Argentina, Australia, France, Germany, India, Italy, Japan, United Kingdom					
Category C:	Brazil, China, Netherlands, New Zealand, Norway, South Africa					
Category D:	Belgium, Chile, Ecuador, Finland, Korea, Peru, Poland, Spain, Sweden, Uruguay					
Category E:	Bulgaria					

SCAR scale 1-1-2003			Alternative scale (hypothetical)								
	Cat.	•	Variable	Fixed	Total	Cat.	,	Variable	Fixed	Total	
Russia	٨	3,6	\$30.100	\$18.519	\$48.619 Russia	C	2.2	\$18.771	\$18.519	\$37.290	
US	A A	3,6	\$30.100	\$18.519	\$48.619 US	C A	2,2 3,6	\$30.717	\$18.519	\$49.235	
	В	2,8	\$23.411	\$18.519	\$41.930 Argentina	В	2,8	\$23.891	\$18.519	<u>-</u>	
Argentina Australia	В	2,8	\$23.411	\$18.519	\$41.930 Argentina \$41.930 Australia	A	3,6	\$30.717	\$18.519	\$49.235	
	В	2,8	\$23.411	\$18.519	\$41.930 Australia	В	2,8	\$23.891	\$18.519	\$42.409	
France	В		\$23.411	\$18.519		В		\$23.891	\$18.519	\$42.409 \$42.409	
Germany India	В	2,8 2,8	\$23.411	\$18.519	\$41.930 Germany \$41.930 India	С	2,8 2,2	\$18.771	\$18.519	\$37.290	
			· ·		•			-		•	
Italy	В	2,8	\$23.411	\$18.519 \$18.510	\$41.930 Italy	В	2,8	\$23.891	\$18.519	•	
Japan	B B	2,8	\$23.411	\$18.519 \$18.510	\$41.930 Japan	В	2,8	\$23.891	\$18.519	•	
UK		2,8	\$23.411	\$18.519 \$40.540	\$41.930 UK	В	2,8	\$23.891	\$18.519	\$42.409	
Brazil	С	2,2	\$18.395	\$18.519	\$36.913 Brazil	С	2,2	\$18.771	\$18.519	\$37.290	
China	С	2,2	\$18.395	\$18.519	\$36.913 China	С	2,2	\$18.771	\$18.519	\$37.290	
Netherlands	С	2,2	\$18.395	\$18.519	\$36.913 Netherlands	С	2,2	\$18.771	\$18.519	\$37.290	
New Zealand	С	2,2	\$18.395	\$18.519	\$36.913 New Zealand	С	2,2	\$18.771	\$18.519	\$37.290	
Norway	С	2,2	\$18.395	\$18.519	\$36.913 Norway	С	2,2	\$18.771	\$18.519	\$37.290	
South Africa	С	2,2	\$18.395	\$18.519	\$36.913 South Africa	С	2,2	\$18.771	\$18.519	\$37.290	
Belgium	D	1,6	\$13.378	\$18.519	\$31.896 Belgium	D	1,6	\$13.652	•	\$32.170	
Chile	D	1,6	\$13.378	\$18.519	\$31.896 Chile	D	1,6	\$13.652	\$18.519	\$32.170	
Ecuador	D	1,6	\$13.378	\$18.519	\$31.896 Ecuador	D	1,6	\$13.652	•	\$32.170	
Finland	D	1,6	\$13.378	\$18.519	\$31.896 Finland	D	1,6	\$13.652		\$32.170	
Korea	D	1,6	\$13.378	\$18.519	\$31.896 Korea	D	1,6	\$13.652		\$32.170	
Peru	D	1,6	\$13.378	\$18.519	\$31.896 Peru	D	1,6	\$13.652	\$18.519	\$32.170	
Poland	D	1,6	\$13.378	\$18.519	\$31.896 Poland	D	1,6	\$13.652	\$18.519	\$32.170	
Spain	D	1,6	\$13.378	\$18.519	\$31.896 Spain	D	1,6	\$13.652	\$18.519	\$32.170	
Sweden	D	1,6	\$13.378	\$18.519	\$31.896 Sweden	D	1,6	\$13.652	\$18.519	\$32.170	
Uruguay	D	1,6	\$13.378	\$18.519	\$31.896 Uruguay	D	1,6	\$13.652	\$18.519	\$32.170	
Bulgaria	E	1	\$8.361	\$18.519	\$26.880 Bulgaria	Ε	1	\$8.532	\$18.519	\$27.051	
		59,8	\$500.000	\$500.000	\$1.000.000		58,6	\$500.000	\$500.000	\$1.000.000	

Base rate: 500.000/54 \$8.361 Base rate: 500.000/54,5 \$8.532