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STATEMENT BY THE LEGAL COUNSEL OF THE UNITED NATIONS TO  
THE INDUSTRIAL DEVELOPMENT BOARD ON THE DRAFT HEADQUARTERS  
AGREEMENT BETWEEN THE UNITED NATIONS AND AUSTRIA

11 April 1967

As a result of negotiations with representatives of the Republic of Austria, undertaken by representatives of the Secretary-General in pursuance of a decision of the Second Committee of the General Assembly (A/6508/Add.1, paragraph 15), a draft has been drawn up of an Agreement between the United Nations and the Republic of Austria regarding the headquarters of the United Nations Industrial Development Organization. The text of this draft Agreement is submitted to the Board in document ID/B/6/Add.1. This draft Agreement is to be accompanied by an Exchange of Notes, which was initially proposed by the Austrian Government to clarify certain of the provisions of the Agreement. A report on the progress of negotiations on the Exchange of Notes was submitted by the Executive Director in document ID/B/6/Add.2. As stated in paragraph 3 of that document, negotiations were still in progress as to the precise scope of privileges and immunities to be accorded officials of UNIDO who are Austrian nationals or stateless persons resident in Austria, and conclusion of the proposed Exchange of Notes awaited the resolution of this issue. I now have the pleasure to inform the Board that the negotiations were successfully concluded yesterday afternoon, and the text of the completed notes to be exchanged will shortly be made available to you.

The draft headquarters Agreement defines the status and the privileges and immunities of UNIDO in Austria and follows substantially the Headquarters Agreement of the International Atomic Energy Agency between that agency and Austria. It is applicable with respect to the permanent headquarters and the temporary

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headquarters, of UNIDO (ID/B/6/Add.1, section 1 (f) (ii)). It will also be applicable temporarily to any building, "in or outside of Vienna which may be used with the concurrence of the Government for meetings convened by the UNIDO" (ibid., section 2 (b)).

As affirmed in the preamble and in section 41 of the draft Agreement, the Agreement is "complementary" to the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly, to which Austria is a party. Accordingly, the Agreement does not duplicate the provisions of the Convention. Rather, it fills certain gaps and elaborates upon certain provisions in the Convention.

First and foremost, it regulates questions not envisaged in the Convention arising as a result of the establishment of the headquarters seat of UNIDO in Vienna. These include such questions as control and protection of the headquarters seat (ibid., sections 7, 8, 9, 10 and 11), radio and other facilities and public services in the headquarters seat (ibid., sections 4, 5, 6 and 12), and provisions to ensure the right of transit to the headquarters seat on the part of not only representatives of States and officials and experts on mission of UNIDO but other categories of persons who have business with the UNIDO, such as representatives of organizations, representatives of information media and invited persons (ibid., sections 21, 22 and 39).

The draft UNIDO Headquarters Agreement complements the Convention on the Privileges and Immunities of the United Nations in another sense. In some respects, it makes explicit what is only implicit in the Convention. And it does so, in most instances, by merely confirming a practice which is adhered to by the United Nations and the Member States generally but which had been or is susceptible of being contested by a Member State. It may be of interest to members of the Board to note one or two examples.

One example I might mention is the immunity on the part of the Organization from taxation by Member States. The Convention provides in section 7 merely that "the United Nations, its assets, income and other property shall be: (a) exempt from all direct taxes...". The use of the term "direct taxes" has given rise to controversies between the United Nations and some Member States as to whether a given tax is "direct" or "indirect". To remove all possible doubt in this respect

in carrying out the intention of the Convention and of Article 105 of the Charter, the present draft Agreement exempts UNIDO "from all forms of taxation" (ID/B/6/Add.1, section 16 (a)). Among the different kinds of taxes, we have had difficulties with one or two Governments as regards exemption from documentary stamp tax and exemption from fees in such matters as the registration of deeds. To cover such cases, the draft Agreement provides that "all transactions to which the UNIDO is a party, and all documents recording such transactions, shall be exempt from all taxes, recording fees, and documentary taxes" (ibid., section 16 (c)).

The draft Agreement also seeks to fill a gap in the régime of privileges and immunities of representatives of Member States. Representatives of States members of the Industrial Development Board are in this category. The Secretariat has always maintained that the so-called principle of reciprocity between States is not applicable in the relations between a host State and a Member State of the United Nations. In other words, a host State of the United Nations, in our view, is not entitled to claim that representatives of a certain Member State cannot enjoy a certain privilege or immunity in the host State because that Member State does not grant a similar privilege or immunity to the diplomatic envoys or citizens of the host State. The validity of this position is to us self-evident; yet there is no express provision in this sense in either the Convention on the Privileges and Immunities of the United Nations or, to my knowledge, in any other agreement governing the headquarters of an international organization. To fill this lacuna, the draft Agreement before you provides, in section 39, that "this Agreement shall apply... irrespective of whether the State concerned grants a similar privilege or immunity to diplomatic envoys or citizens of the Republic of Austria".

With regard to officials of UNIDO, the draft Agreement provides for privileges and immunities substantially similar to, but, in certain details, somewhat more generous than, those accorded by Austria to officials of the International Atomic Energy Agency. For instance, it affirms that officials of UNIDO shall have immunity from taxation on the pension paid them by the Pension Fund of the United Nations. In addition, it grants officials of UNIDO the right to acquire immovable property in Austria under the same conditions applicable to Austrian nationals.

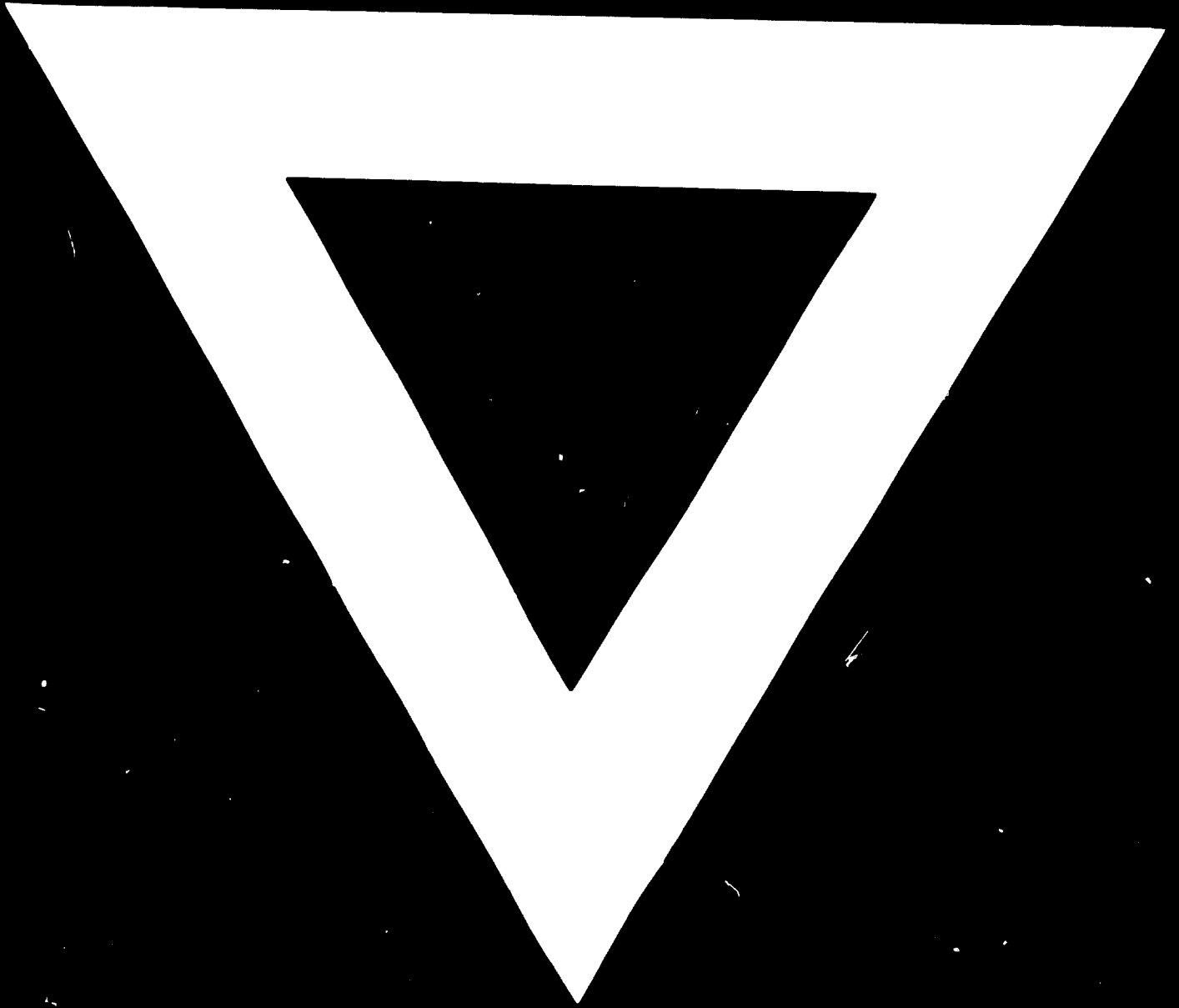
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In short, I may assure the Board that the draft Agreement provides for reasonable facilities, and privileges and immunities for UNIDO in Austria. Given goodwill on both sides in its implementation, the Agreement should enable UNIDO, at its inception, to exercise its functions and to fulfil its purposes. In any case, the draft Agreement envisages, in section 44, the conclusion of supplemental agreements to regulate matters not foreseen in the main Agreement, should it be found necessary to do so in the future.

I cannot conclude my remarks without a word of warm appreciation to the Government of the Republic of Austria and, particularly to its representatives who took part in the negotiation of the draft Agreement: the Foreign Minister and the Under-Secretary of State for Foreign Affairs, the Ministers of Finance and Justice, officials in the competent Ministries in Vienna and, last but not least, Ambassador Waldheim and members of his Permanent Mission. Thanks to their friendly co-operation and goodwill, negotiations have been conducted in a very cordial atmosphere. Through this co-operation and goodwill and the great generosity of the Government of the Republic of Austria, we have been able to prepare a Headquarters Agreement which, if not perfect in every respect, is the most complete and liberal agreement so far concluded between a Government and one of the United Nations family of organizations. On behalf of the Secretary-General, I should like to avail myself of this opportunity to put on record our sincere thanks to the Government of the Republic of Austria.

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