

REPUBLIC OF AUSTRIA

== The Federal Minister
== for Foreign Affairs

Benita Ferrero-Waldner

Vienna, 24 January 2002

Ref. 855/0007e-I.5/2002

Sirs,

I have the honour to refer to the Agreement between the Republic of Austria, the United Nations and the International Atomic Energy Agency regarding the establishment and administration of a common fund for financing major repairs and replacements at their headquarters seats at the Vienna International Centre, dated 19 January 1981, including an Exchange of Notes of the same date regarding dispute settlement under this Agreement (hereinafter referred to as the „Agreement of 1981“), as amended by the Exchange of Notes of 20 December 1985 between the Republic of Austria, the United Nations, the International Atomic Energy Agency

H.E. Steinar Bjornsson
Officer-in-Charge
United Nations Office at Vienna

H.E. Carlos Alfredo Magariños
Director General
United Nations Industrial Development Organization

H.E. Wolfgang Hoffmann
Executive Secretary
Preparatory Commission for the Comprehensive
Nuclear-Test-Ban Treaty Organization

H.E. Mohamed ElBaradei
Director General
International Atomic Energy Agency

- 2 -

and the United Nations Industrial Development Organization extending the provisions of the existing Agreements regarding common areas of the Vienna International Centre until their replacement with definite agreements and as amended by the Exchange of Notes of 15 October 1996 between the Republic of Austria, the United Nations, the International Atomic Energy Agency and the United Nations Industrial Development Organization amending Articles 3(2)(a) and 8(2) of the Agreement of 1981;

Considering that agreements have been concluded between

- the Republic of Austria and the International Atomic Energy Agency regarding the Headquarters of the International Atomic Energy Agency on 11 December 1957 (as amended on 4 June 1970),
- the Republic of Austria and the United Nations regarding the seat of the United Nations in Vienna on 29 November 1995,
- the Republic of Austria and the United Nations Industrial Development Organization regarding the headquarters of the United Nations Industrial Development Organization on 29 November 1995 and
- the Republic of Austria and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization regarding the Seat of the Commission on 18 March 1997;

Considering further that the Parties wish to change from the present system of reimbursements into the Common Fund to a system of annual advance payments, I have the honour to propose that the following amendments shall be made to the Agreement of 1981:

- 3 -

1. a) The **Title** of the Agreement shall be amended to read as follows:

„Agreement between the Republic of Austria, the United Nations, the International Atomic Energy Agency, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization regarding the Establishment and Administration of a Common Fund for Financing Major Repairs and Replacements at their Headquarters or Seats at the Vienna International Centre“.

1. b) The **Preamble** of the Agreement shall be amended to read as follows:

„Bearing in mind that the Government of the Republic of Austria (hereinafter referred to as „the Government“), the United Nations (hereinafter referred to as „the UN“), the International Atomic Energy Agency (hereinafter referred to as „the IAEA“), the United Nations Industrial Development Organization (hereinafter referred to as „the UNIDO“) and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (hereinafter referred to as „the Commission“) are desirous of establishing a common fund for the purpose of meeting the expenses for major repairs and replacements at the headquarters seats of the Organizations at the Vienna International Centre;

The Government , the UN , the IAEA , the UNIDO and the Commission (hereinafter referred to as „the Parties“) have agreed as follows:”

2. **Article 1** shall be amended to read as follows:

Article 1

“The Parties hereby establish a common fund, for the purpose of meeting the cost of major repairs and replacements of buildings, facilities and technical installations, which are the property of the Government and form part of the headquarters areas defined in the Agreements regarding the common headquarters areas and the respective headquarters seats of the UN, the IAEA, the UNIDO and the Commission.”

3. In **Article 2(1)(a)** the words „the UN and the IAEA“ shall be replaced by the words “the UN, the IAEA, the UNIDO and the Commission (hereinafter referred to as “the Organizations”)”.

4. **Article 2, paragraph 2** shall be amended to read as follows:

“(2) For the purposes of this Article, the Government, the UN, the IAEA, the UNIDO and the Commission have agreed on a list of main elements which they may modify in the light of experience. The agreed list is contained in the Annex.”

5. **Article 3, paragraphs 1 and 2**, shall be amended to read as follows:

“(1) The Government shall contribute US\$ 1,100,000 and the Organizations shall jointly contribute US\$ 1,100,000 to the common fund per annum, to be paid in January of each year. This amount will be converted to Euro at the official exchange rate of the United Nations for the month of December 2001.

(2) Any portion of the contributions envisaged in paragraph 1 that is not disbursed in the respective calendar year shall remain in the common fund for future use.”

The equivalent sum in Euro of US\$ 1,100,000 at the official exchange rate as indicated in Article 3, paragraph 1, shall be operative as from 1 January 2002 to 31 December 2006.

6. **Article 3, paragraph 3** shall be amended to read as follows:

“(3) In case of unexpected major repairs and replacements, which are not included in the agreed investment plan, the Parties will consult each other with a view to determining the amount to be spent to cover the cost that exceeds the money available in the common fund. Following these consultations the Government shall advance the approved amount, being additional to the contributions required under revised Article 3, paragraph 1. With respect to the additional funds advanced by the Government fifty percent (50%) of this amount shall be reimbursed by the organizations to the Government in the succeeding calendar year or, if such

- 5 -

reimbursement is not effectuated during that year, the entire amount advanced by the Government shall be deducted from the Government's contribution for the year following that year."

7. Article 3, paragraph 4 remains unchanged.
8. **Article 7** is deleted and a new Article 7, which does not apply to the Commission, is inserted to read as follows:

"With respect to the year 2001, the following shall apply:

1. In implementation of the Exchange of Notes of 15 October 1996, the Government shall deposit the amount of US\$ 485,230 into the Common Fund for Major Repairs and Replacements during the second half of the year 2001.
2. Disbursements made for major repairs and replacements during the year 2000 shall be reimbursed into the fund in accordance with Article 3(2)(a) of the 1981 Agreement as amended by the Exchange of Notes of 15 October 1996, i.e. in equal shares by the Government, the UN, the IAEA and the UNIDO during the year 2001 taking into account that the ceiling for reimbursable expenditures of US\$ 300,000 shall apply to the UN, the IAEA and the UNIDO, respectively.
3. Contributions to the common fund for the year 2001 according to Article 3(1) of the 1981 Agreement as amended by the Exchange of Notes of 20 December 1985, shall be made during the year 2001 in the amount of US\$ 25,000 by the Government, the UN, the IAEA and the UNIDO.
4. With respect to disbursements made for major repairs and replacements during the year 2001, the Government, the UN, the IAEA and the UNIDO agree that the obligation of Article 3(2) of the 1981 Agreement to reimburse the disbursements made during any calendar year into the fund in equal shares by the Government, the UN, the IAEA and the UNIDO during the subsequent year, shall not apply. The maximum amount to be disbursed from the common fund for the purpose of major repairs and replacements during the year 2001 shall be set at US\$ 1,870,000."

9. **Article 8** shall be amended to read as follows:

Article 8

“(1) At five year intervals from the entry into force of this Agreement, the Parties shall review the terms on which the common fund shall continue.

(2) To allow for the necessary budgetary measures, two years before the end of any five-year period, the Parties shall enter into negotiations on the revision of their contributions for the next five-year period, taking into account the experience in the implementation of this Agreement, in particular the actual costs of major repairs and replacements, agreed plans for major repairs and replacements, inflation and currency fluctuations. In case no agreement on a new fixed amount can be reached before the expiration of any five-year period, the previously fixed amount continues to be applied until a new agreement is reached.

(3) After the entry into force of the Comprehensive Nuclear-Test-Ban Treaty the Comprehensive Nuclear-Test-Ban Treaty Organization shall have the right to succeed to the Commission as Party to this Agreement. Such succession shall take effect on the date of a notification of succession by the Comprehensive Nuclear-Test-Ban Treaty Organization to all other Parties to this Agreement.

(4) This Agreement shall cease to be in force with respect to any of the Organizations if the respective headquarters or seat agreement is terminated. In the event of such termination, the remaining Parties shall consult to determine whether the Agreement shall continue in force for them, subject to any necessary amendments.”

10. The Exchange of Notes of 19 January 1981 concerning the settlement of disputes under the 1981 Agreement shall cease to be in effect and **Article 6** of the 1981 Agreement shall be amended to read as follows:

Article 6

“Disputes arising from the administration of the common fund as well as from the interpretation or implementation of this Agreement, as amended, which are not settled by negotiation or other modes of settlement, shall be referred for final decision to a tribunal of three arbitrators.

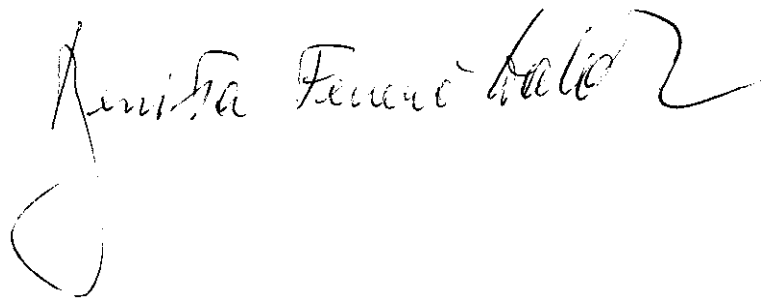
- 7 -

- (a) In the event of a dispute involving all Parties to this Agreement, one arbitrator shall be chosen jointly by the executive heads of the United Nations Office in Vienna, the IAEA, the UNIDO and the Commission, one shall be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria and the third, who shall be the chairman of the tribunal, shall be chosen by the first two arbitrators. Should either Party to the dispute not have chosen its arbitrator within six months following appointment by the other Party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of either the Organizations or the Government.
- (b) (i) In the event of a dispute between the Government on the one hand and the UN, the IAEA, the UNIDO or the Commission on the other hand, one arbitrator shall be chosen by the Federal Minister for Foreign Affairs of the Republic of Austria, one shall be chosen by the Executive Head of the United Nations Office in Vienna, the IAEA, the UNIDO or the Commission, as applicable, and the third, who shall be the chairman of the tribunal, shall be chosen by the first two arbitrators. Should either Party not have chosen its arbitrator within six months following appointment by the other Party of its arbitrator or should the first two arbitrators fail to agree upon the third within six months following the appointment of the first two arbitrators, such second or third arbitrator shall be chosen by the President of the International Court of Justice at the request of the Government or of the Executive Head concerned. In the event of such a dispute, any of the Organizations shall have the right to join the proceedings.
- (ii) The Government or the Executive Head concerned may ask the competent intergovernmental organ of the Organization concerned to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, any interim decision of the arbitral tribunal shall be observed by both Parties. Thereafter the arbitral tribunal shall render a final decision, having regard to the opinion of the Court."

- 8 -

If the foregoing is acceptable to the United Nations, the International Atomic Energy Agency, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, I have the honour to propose that this Letter and your joint Letter of Confirmation shall constitute an Agreement between the Republic of Austria, the United Nations, the International Atomic Energy Agency, the United Nations Industrial Development Organization and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization, which shall enter into force on 1 January 2002, subject to a notification by the Republic of Austria that the necessary constitutional requirements for the entry into force of this Agreement have been fulfilled.

Accept, Sirs, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Amrita Fernando". The signature is written in a cursive style and is positioned above a large, faint circular mark.