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ECONOMIC COMMISSION FOR AFRICA
Committee of Nine on the
Preparatory Work for the
African Development Bank

REPORT OF THE COMMITTEE OF NINE
ON

THE HEADQUARTERS AGREEMENT OF THE AFRICAN DEVELOPMENT BANK

An outline of its guiding principles and an annotated draft agreement

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A B B R E V I A T I O N S

ADB Agreement:	Agreement Establishing the African Development Bank.
General Convention:	Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946.
UN Headquarters Agreement:	Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed on 26 June 1947.
Agencies Convention:	Convention on the Privileges and Immunities of the Specialized Agencies, approved by the United Nations General Assembly on 21 November 1947.
UN Interim Headquarters Agreement:	Interim Headquarters Agreement between the United Nations and the United States of America, signed on 18 December 1947.
FAO Agreement:	Agreement between the Italian Government and the Food and Agricultural Organization of the United Nations regarding the Headquarters of that Organization signed on 31 October 1950.
ICAO Agreement:	Agreement between the International Civil Aviation Organization and the Government of Canada regarding the Headquarters of that Organization, signed on 14 April 1951.
ECLA Agreement:	Agreement between the Government of Chile and the United Nations Economic Commission for Latin America regulating Conditions for the Operation in Chile of the Headquarters of the Commission, signed on 16 February 1953.

ECAFE Agreement:

Agreement between the United Nations and the Government of Thailand relating to the Headquarters of the Economic Commission for Asia and the Far East in Thailand, signed 26 May 1954.

UNESCO Agreement:

Agreement between the French Government and the United Nations Educational, Scientific and Cultural Organization regarding the Headquarters of UNESCO and its Privileges and Immunities on French Territory, signed 2 July 1954.

ECA Agreement:

Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Economic Commission for Africa, signed on 18 June 1958.

I. INTRODUCTION

1. Resolution 3 of the Conference of Finance Ministers,^{1/} which entrusted the Committee of Nine to carry out the work preparatory to the establishment of the African Development Bank, requested that Committee to draft, inter alia, a "Headquarters Agreement" for the ADB.
2. In pursuance of this mandate, the Committee requested the Executive Secretary of the United Nations Economic Commission for Africa, in the first instance, to collect material relating to the headquarters agreements concluded by other international organizations and to suggest some guiding principles for, and the main contents of, a Headquarters Agreement of the ADB. It then requested the Executive Secretary to prepare a preliminary draft of such an Agreement.
3. The documents submitted by the Executive Secretary were carefully studied and considered by the Committee at its second, third and fourth sessions (14 to 18 December 1963; 16 to 21 March and 13 to 17 July 1964). In the course of its work the Committee approved the draft of a Headquarters Agreement for the ADB.
4. As a result of its deliberations, the Committee submits herewith to the Board of Governors of the ADB the present Report containing its findings as regards the principles which in its view should guide the Board in the framing, negotiation and conclusion of the Headquarters Agreement and - as an Annex to this Report - an annotated Draft Agreement between the African Development Bank and the Government of (the Host State) regarding the Principal Office of the African Development Bank.

^{1/} Para. 1(c) of Resolution 3 on the Preparatory Work for the Establishment of the African Development Bank, adopted by the Conference at its final plenary session on 4 August 1963 at Khartoum.

II. GUIDING PRINCIPLES

The Role of the Headquarters Agreement

5. It should be recalled that the ADB Agreement itself endows the Bank - to enable it to fulfil its purpose and functions - with full international personality, with the power to enter into international agreements and with certain broadly-defined immunities, exemptions and privileges (Chapter VII, Articles 50 to 57). They relate, in particular, to immunity from legal process and executive and legislative action; to inviolability of its property, assets and archives; to freedom from financial restrictions, regulations or moratoria; to "personal" immunities, exemptions and privileges for its Governors, Directors, their Alternates, and the officials of the Bank; to exemption from taxation of emoluments paid by the Bank; importantly, to exemption from taxation of obligations and securities issued by the ADB; etc. This status and these immunities, exemptions and privileges must be accorded to the Bank in the territory of each member (Article 50).

6. The international obligation to accord such a regime to the Bank is imposed by the ADB Agreement on all member governments, including the Host Government, because the operations and activities of the ADB may in law, - and in practice in all likelihood will - extend to all member countries. If a supplementary agreement is required in the case of the Host Government, it is because physically the site and buildings constituting the principal Office of the Bank will be located in its territory; the services of the Bank will operate there and from there; substantial funds of the ADB will be held, managed and disposed there; Directors and their Alternates may reside and the management and staff of the Bank will reside there; and Governors and their Alternates as well as a large number of consultants, experts and other official visitors both from member and non-member countries must have access to the principal office and the possibility of temporarily staying in the host country. These factors, as well as other factors arising therefrom,

make it incumbent on both the Bank and the Host Government to determine and define their mutual rights and obligations regarding all these factors in some detail so that the business of the Bank may be organized and transacted without let or hindrance, the co-operation between the management of the ADB and the authorities of the Host Government is smooth and fully effective and the Host Government is protected from abuse and undue interference with the maintenance of law and order in its own territory.

7. This is best done in a Headquarters Agreement as, for the sake of brevity, an "Agreement regarding the Principal Office of the ADB between the Host Government and the ADB" will be called in this report. Such an Agreement should take the relevant provisions of the ADB Agreement as its basis and define, adjust and develop them in the light of the requirements of the Bank according to the pattern of Headquarters Agreements concluded in the case of other international organizations.

8. Such existing Agreements cover subjects like (a) control and authority over the headquarters; (b) maintenance of law and order therein; (c) jurisdiction; (d) financial facilities; (e) communications and transport; (f) access and residence; (g) rules concerning personal immunities, exemptions and privileges, (h) tax exemptions; (i) public services, etc. In addition, they deal with more technical matters - machinery for settlement of disputes, consultations between the parties, supplementary agreements, definition of terms, etc. Special provision is made, where required, for the interim seat of the international organization concerned. It may be added that the basic instrument defining the immunities, exemptions, and privileges in general and the Headquarters Agreement are, wherever possible, treated as complementary and neither is permitted to narrow down the effect of the other.

Principles of Negotiation

9. The Bank, so the Preamble of the ADB Agreement proclaims, is a "financial institution common to all African countries"; it is

being formed to strengthen African solidarity. It is in this spirit that the Host Government can be expected to approach the problems that should be solved in the Headquarters Agreement. Some of the factors mentioned in this connexion in para. 6 above imply advantages that the Host State may, directly or indirectly, derive economically from the presence of the Bank within its territory. This, too, will influence the attitude of the Host Government in the negotiation. Both the Host Government and the Bank will be aware that a denial of certain exemptions or privileges may not only impair the efficiency of the latter in its general operations but result in an unintended shift in the use of funds destined to serve the orderly development and social progress of the Bank's members.

10. Indeed, so decisive and imperative appear these considerations that it may be argued:

(a) that in choosing the location for the principal office of the Bank (Art. 39 (1)), the Board of Governors should take into account, as one of its criteria, the readiness of the prospective Host Government, expressed in unequivocal terms, to apply forthwith (Art. 50) the relevant provisions of the ADB Agreement and to conclude with the Bank without undue delay a Headquarters Agreement according it immunities, exemptions and privileges in conformity with the standards set by the Headquarters Agreements of other international organizations; and, moreover

(b) that, the Bank being an African institution, the Host Government should be ready, in the Headquarters Agreement as well as in practice, to extend to the Bank, its Governors, Directors, President, staff members etc. all immunities, exemptions and privileges which it accords to other international organizations or its officials and which the Bank may reasonably claim in order to fulfil its purpose and functions.

11. In this connexion it is perhaps apposite to recall the basic concepts on which the system of immunities, exemptions and privileges of the Bank must rest. They are granted, as the ADB records (Art. 59), in the interests of the Bank - and not those of any particular member or category of persons. It is the international personality of the Bank and its character as an institution common to all African countries (Preamble, Arts. 38 and 50) which require that they must be recognized and respected by the authorities of the Host State irrespective of all political considerations which, at any given moment, may affect its relations with any member or non-member State or international organization.^{1/} The sole judge of its requirements, as far as immunities, exemptions and privileges that are provided for it are concerned, must be the Bank itself.

12. Yet neither this nor the guiding principles for negotiation advanced in para. 10 above are intended to suggest that, as a result, the Bank should enjoy a one-sided regime of privilege tending to interfere with law and order or to affect adversely the social and economic conditions in the Host State. An examination of the contents of the Draft Agreement reproduced in the Annex hereto will show that it combines a definition of the control and authority of the Bank over its headquarters with a re-affirmation of the responsibility of the Host Government for the maintenance of law and order therein. Except as expressly provided, the laws of the Host State continue to apply within those headquarters (Arts. 2 to 4). The exemptions from immigration restrictions and alien registration do not dispense with the need for the persons to whom they apply, to show identification documents (Art. 6). Generally, the Bank undertakes to co-operate fully with the authorities of the Host State in order to facilitate the administration of justice and the

^{1/} Thus, the UN Headquarters Agreement expressly lays down that its provisions concerning access to the UN Headquarters "shall be applicable irrespective of the relations existing between the Governments of the persons referred to and the Government of the United States" (s.12).

observance of local law and to prevent abuse (Art.20). It must, where immunity of jurisdiction would impede the course of justice and it is not contrary to its interests, waive such immunity in the case of its own officials (Art. 19). Finally, in some respects the 'personal' exemptions and privileges cannot be claimed by the Bank in the case of its officials who are local nationals (Arts.15 and 16).

The Decision on the Headquarters and the Draft Agreement

13. It is in the light of these basic considerations that the Committee prepared the Draft Agreement. The Draft follows, in the main, the corresponding provisions in the headquarters agreements of the United Nations, FAO, ICAO and UNESCO which are representative of headquarters agreements of most international organizations with- in and without the United Nations system. The provisions of the draft have, of course, been adjusted to those of the ADB Agreement and to the specific requirements of the Bank.

14. However, in addition to any specific amendments to the Draft Agreement that the Board of Governors may deem necessary, the draft may require further modification in the light of the circumstances in which the Principal Office of the Bank will actually be estab- lished and of the legal conditions prevailing in the Host State. This raises three sets of considerations.

15. First, if the site and buildings that are being offered for the permanent Principal Office of the Bank are not immediately available, the Bank will have to establish provisional installations which must be in the territory of the Host State. (Absence of immediately available housing facilities for the officials of the Bank may create a similar situation). In such an event, the Bank should conclude with the Member Government concerned an Interim Arrangement which it is suggested should define the provisional installations and declare that all the provisions of the Draft Agreement - recognized as the basis for negotiation of a suitable Head- quarters Agreement for the Bank - shall have full force and effect,

excepting solely those provisions which have a direct and exclusive bearing on the permanent Principal Office.^{1/} Such an Interim Arrangement should be signed as soon as, with the consent of the Member Government concerned, the decision is taken to establish provisional installations in its territory; it should come into effect on the date of its signature and remain in effect until the Bank shall have ceased to use the provisional installations.^{2/}

16. Secondly, in pursuance of an offer made - as it may be surmised - by the prospective Host Government and accepted by the Bank, the latter will acquire, for its use at least as long as its Principal Office is located there, a certain site, buildings, structures etc. This transaction - which will form the basis for its decision to locate the Principal Office in the territory of the prospective Host State - will take the form of a legal Act (e.g. an assignment or a leasehold) distinct from the Headquarters Agreement. The Act will define the land, buildings, structures etc. concerned and the nature of the rights of the Bank therein; it will determine the obligations of both parties - for instance, delivery of possession; installation; expenses connected therewith; maintenance and repair.^{3/}

17. Hence, thirdly, the final text of the Headquarters Agreement will be affected by the nature and details of the transaction by which the Bank will acquire the land, buildings etc. which will

^{1/} Cf. UN Interim Headquarters Agreement, Art. II.

^{2/} Ibidem, Art. IV; see also Interim Arrangement on Privileges and Immunities of the United Nations, concluded between the UN Secretary-General and the Swiss Federal Council on 11 June/1 July 1946, s.28.

^{3/} See, for instance, Supplemental Agreement to the Agreement between the International Atomic Energy Agency and the Republic of Austria Regarding the Headquarters of that Agency, signed on 3 June 1958.

initially constitute its Principal Office.^{1/} Similarly, certain particularities of the legal system of the prospective Host State may require further additions or amendments to the Draft Agreement in the course of negotiation - for instance - social security legislation; the legal position of the estate of an official of the Bank who dies in the Host State; rules as regards the registration of motor vehicles etc.

18. Subject to the considerations set out in paras. 15 to 17 above and, of course, subject to any other modifications desired by the Board of Governors, it is suggested that both the Bank and the Host Government should accept the draft as a basis for negotiation of the final text of a Headquarters Agreement in the sense that departures from its text should be admitted only to the extent that they are required for the smooth and effective working of its substantive provisions. It is in the interest of the Bank that both parties to the negotiation should be fully aware of, and follow, the guiding principles discussed in paras. 9 and 10 above.

19. Hence, it may be envisaged that before the Board of Governors takes its decision on the location of the Principal Office in conformity with Art. 39 of the ADB Agreement, it should ensure that the prospective Host Government formally declares that it is ready and willing to conclude with the Bank, without delay, an Agreement relating to its Principal Office which shall accord to the Bank immunities, exemptions and privileges in conformity with the standards set in the draft instrument reproduced in the Annex (cf. para. 10 (a) above). If this is the position, the decision the Board of Governors may desire to adopt could, recalling the declaration by the Host Government:

- (a) approve the said draft instrument as a basis for negotiation of an Agreement with the Host Government regarding the Principal Office of the Bank;

^{1/} Cf. for instance, FAO Agreement, ss. 2 to 4; second recitals of the Preamble to, and Art. 2 of, the UNESCO Agreement.

(b) accept, subject to the conclusion of such an Agreement in conformity with the standards set in the said draft instrument, the offer tendered to the Bank by the Host Government, of a site in its territory for the establishment of the Principal Office of the Bank; and

(c) request the President to negotiate such an Agreement accordingly and to submit it to the Board of Governors for ratification.^{1/}

It may be added that in accordance with Art. 32(b) of the ADB Agreement the Board of Directors will be consulted by the President in the course of the negotiations with the Host Government.

^{1/} Cf. the Resolution quoted in the Preamble to the FAO Agreement.

ANNEX

DRAFT AGREEMENT BETWEEN THE AFRICAN DEVELOPMENT BANK AND THE
GOVERNMENT OF (THE HOST STATE) REGARDING THE PRINCIPAL
OFFICE OF THE AFRICAN DEVELOPMENT BANK

THE AFRICAN DEVELOPMENT BANK AND THE GOVERNMENT OF (THE HOST STATE);
CONSIDERING that the Board of Governors of the African Development
Bank adopted at its first meeting, held in on
.....1964, a decision to locate the Principal Office
of that Bank in (the Host State);

CONSIDERING that the Government of (the Host State has granted, and
that the African Development Bank has accepted, by an Act signed on
..... 1964, the permanent use and occupancy of the land,
buildings, other structures and installations defined in
of that Act);

DESIRING to regulate in the present Agreement certain questions relat-
ing to the establishment and operation of the Principal Office of
the African Development Bank and to complete, adjust and develop in
this respect the relevant provisions of the Agreement Establishing
the African Development Bank to which the Government of (the Host
State) is a party; and

RECALLING that the African Development Bank is a financial institu-
tion common to all African countries;

HAVE AGREED as follows:

Notes

1. The Headquarters Agreement will be concluded by the Bank by
virtue of its power, in order to enable it to fulfil its pur-
pose and the functions with which it is entrusted, to "enter
into agreements with members, non-member States and other
international organizations" (ADB Agreement, Art.50). The
Headquarters Agreement does not come within the category of

"general agreements" the conclusion of which must be authorized by the Board of Governors in accordance with Art. 29 (2) (c) of the ADB Agreement, though in view of its significance for the future of the Bank it should be submitted to that Board for ratification (Cf. para. 19 of the Report). The Headquarters Agreement should be signed by the President of the Bank as its legal representative (ADB Agreement, Art. 37 (3)); see, in this respect, the Final Clause.

2. In accordance with Art. 39 of the ADB Agreement, the English version of the Headquarters Agreement refers, not to the "Headquarters", but to the "Principal Office" of the Bank. This term - used by the IBRD and IADB - is in English more appropriate in the case of an international financial institution; the terminological distinction does not exist in French.
3. The name of the Member State in whose territory the Principal Office of the Bank will be located, will be substituted for the term "Host State" in the final text of the Headquarters Agreement; the term is therefore put in brackets throughout the Draft.
4. The decision to locate the Principal Office of the Bank in the Host State, referred to in the first recitals of the Preamble, will be taken by the Board of Governors in conformity with Art. 39 of the ADB Agreement (see para. 19 of the Report).
- 5.(a) As regards the second recitals of the Preamble, it is anticipated that, as happened in many precedents of other international organizations, the Host Government will offer to the Bank by way of a grant, and the Bank will accept, the permanent use and occupancy of certain land, buildings, structures and installations. The exact legal nature and scope of the transaction not yet being known, the relevant part of the second recitals is put in brackets.

- (b) It may be expected that the transaction will take the form of a specific legal Act (e.g. an assignment or leasehold) which will provide that the grant will remain in force so long as the Principal Office of the Bank is located on the land and in the buildings in question, and determine the obligations of the parties concerned - such as maintenance and repairs - arising out of the grant (cf., for instance, FAO Agreement, ss. 2 to 4; second recitals of the Preamble to, and Art. 2 of, the UNESCO Agreement).
- 6.(a) The ADB Agreement endows the Bank with full juridical personality and certain broadly-defined immunities, exemptions and privileges which, by virtue of its ratification, must be accorded by the Host State to the Bank (Arts. 50 to 57, 24). The purpose of the Headquarters Agreement is therefore - as the third recitals of the Preamble state - to complete, adjust and develop the relevant provisions of the ADB Agreement as a consequence of the fact that the Principal Office of the Bank is located in the territory of the Host State; it is not to supersede the provisions of the ADB Agreement.
- (b) This principle is expressly laid down in Art. 21 of the Headquarters Agreement which specifies that the provisions of that Agreement and of the ADB Agreement should be treated as complementary and that neither shall narrow the effect of the other. Thus in the matter of immunities, exemptions and privileges the provisions of both Agreements must be read, and applied, in conjunction with each other. Indeed, certain matters - such as the legal status of the Bank in the Host State, immunity from legal process - are dealt with, at least for the time being, solely in the ADB Agreement (Arts. 51 and 52), the provisions of which are, of course, directly binding on the Host State.

- (c) The position of the Bank, it may be recalled, is in this respect not unlike that of the United Nations (or, for that matter, of ECA, ECLA, or ECAFE) whose Headquarters Agreement is complementary to the United Nations Charter (Arts. 104 and 105) and the General Convention (cf. UN Headquarters Agreement, s. 26; ECLA Agreement, s.20; ECAFE Agreement, s. 25; ECA Agreement, s.17).
7. The fourth recitals of the Preamble recall the Preamble to the ADB Agreement which recognizes the Bank as a "financial institution common to all African countries". The Bank being an African institution, the Host Government must be expected, in the Headquarters Agreement as well as in its practice, to extend to it, its Governors, Directors, President, officials etc. all immunities, exemptions and privileges which it accords to other international or African organizations and which the Bank may reasonably claim in order to discharge its purpose and functions fully and efficiently; see in this respect Arts. 15 (k) and 24 of the Headquarters Agreement.

I. DEFINITIONS

Article 1

In this Agreement the expression:

- (a) "ADB Agreement" means the Agreement Establishing the African Development Bank;
- (b) "appropriate authorities of (the Host State)" means such national, local or other authorities of (the Host State) as may be appropriate in accordance with the laws of (the Host State);
- (c) "Bank" means the African Development Bank;
- (d) "Government" means the Government of (the Host State);
- (e) "laws of (the Host State)" includes legislative acts, decrees, regulations or orders issued by or under the authority of the Government;
- (f) "officials of the Bank", unless the context of this Agreement provides otherwise, includes all officers, officials, employees and other staff members of the Bank with the exception of those recruited locally and assigned to hourly rates;
- (g) "President" means President of the Bank;
- (h) "Principal Office" includes:
 - (i) the land together with the buildings and other structures and installations erected upon it, as defined in the Act, signed on, 1964, and referred to in the Preamble to this Agreement;and

- (ii) any other land, buildings, structures or installations which may be defined as being part of the Principal Office by a supplementary agreement between the Bank and the Government; and
- (i) "representatives of governments" includes representatives, deputy representatives, advisers, technical experts and secretaries of delegations of governments which are members of the Bank.

Notes

1. "ADB Agreement": As to its relationship to the Headquarters Agreement, see Note 6 to the Preamble.
2. As to the use of the term "Host State", see Note 3 to the Preamble.
3. "Officials of the Bank": The ADB Agreement uses in its English text different expressions in this respect. The phrase "officers and staff" occurs in Art. 4, 37 (2), 38 (2) and (3); "officers and employees" in Art. 56; "Officers and other professional staff" in Art. 57 (2); and "officials" in Art. 59; the terminology of the French text is more uniform. While for internal administrative purposes such distinctions may be valid, the Headquarters Agreement proceeds from a uniform notion of "officers" from which only staff members recruited locally and employed at hourly rates are exempt. (This corresponds to the technique used, for instance, in the ECA Agreement, Art. 1 (g)). It introduces, however, its own differentiation of officials as regards their personal immunities, exemptions and privileges - cf. Arts. 15 (d) or 16 (3),

4. "Principal Office": This definition is designed to include the land, buildings, other structures and installations initially placed at the disposal of the Bank by the Host Government as well as any subsequent additions thereto - see Note 5 to the Preamble and cf. FAO Agreement, s. 1 (f); ECA Agreement, s. 1 (f)); as to supplementary agreements, see Art. 22 (1).

II. CONTROL AND PROTECTION OF THE
PRINCIPAL OFFICE

Article 2

- (1) The Principal Office shall be inviolable and shall be under the control and authority of the Bank, as provided in this Agreement.
- (2) The Bank shall have the power to make regulations operative within the Principal Office for the purpose of establishing therein conditions in all respects necessary for the conduct of its activities.
- (3) Except as otherwise provided in the ADB Agreement, in this Agreement or in the regulations made pursuant to paragraph (2) of this Article, the laws of (the Host State) shall apply within the Principal Office.

Notes

1. See ADB Agreement, Arts. 50, 52 and 53; General Convention, s.3; UN Headquarters Agreement, ss. 7 and 8, Agencies Convention, s. 5; FAO Agreement, s. 6; ICAO Agreement, s.4; ECLA Agreement, s. 3; ECAFE Agreement, s. 3; UNESCO Agreement, Art. 5; ECA Agreement, s.2.
2. Article 2 of the Headquarters Agreement develops, as regards the Principal Office, the principles of extraterritoriality of the Bank and the inviolability of its assets, which are, respectively, implicit in its international personality and the immunity of its assets for which the ADB Agreement expressly provides (Arts. 50 and 53; as to the complementary nature of both Agreements, see Note 6 to the Preamble and Art. 21 of the Headquarters Agreement). Consequently, control and authority over the Principal Office are vested in the Bank; the

Bank has a limited power to make regulations operative within the Principal Office; officers or officials of the Host State may enter that Office with the consent of the President of the Bank only; and the Host State has the duty to protect that Office from disturbances and the Bank from interference with its legal rights in respect of that Office (see Arts. 3 to 5 below).

3. Neither Article 2 nor the other provisions of the Headquarters Agreement are, however, designed to create for the Bank a one-sided regime of privilege tending to interfere with law and order in the Host State. Thus, control and authority are vested in the Bank "as provided in this Agreement" - not in an absolute form. The power of the Bank to make regulations within the Principal Office, accorded in para. (2) of the Article, is limited by the provision that the conditions which such regulations intend to establish must be "in all respects necessary" for the conduct of the activities of the Bank; they must not pursue other objectives - thus, while they may relate to discipline within the precincts of the Principal Office, they could not, for instance, relate to the registration of births, deaths and marriages.
4. The most important limitation to the principle that control and authority over the Principal Office is vested in the Bank is found in para. (3) of Article 2 which lays down, as a general proposition, that the laws of the Host State apply within the Office except as otherwise provided in the ADB or Headquarters Agreements. This implies not only the application of the rules of substantive law of that State but also the jurisdiction of its Courts (civil and criminal), in all matters for which the ADB Agreement or the Headquarters Agreement do not provide otherwise - e.g. for personal transactions of the officials of the Bank that happen to take place on its premises.

5. Further important limitations to the same principle will be found in:
- Art. 3 (2) of the Headquarters Agreement which imposes a duty on the Bank to prevent the Principal Office from becoming a refuge for offenders against the law, etc.;
 - Art. 59 of the ADB Agreement and Art. 19 of the Headquarters Agreement which impose a duty on the Bank and the President to waive, in certain circumstances, personal immunities; and
 - Art. 20 of the Headquarters Agreement which enjoins the Bank to co-operate fully with the authorities of the Host Government in order to facilitate the administration of justice and the observance of law and to prevent abuse.

Article 3

(1) Officers or officials of (the Host State) whether administrative, judicial, military or police, shall not enter the Principal Office to perform any official duties therein except with the consent of and under conditions agreed to by the President.

(2) Without prejudice to the provisions of the ADB Agreement or of this Agreement, the Bank shall prevent the Principal Office from becoming a refuge for persons who are avoiding arrest under any law of (the Host State) or who are required by the Government for extradition to another State or who are endeavouring to avoid service of legal process.

Notes

1. See ADB Agreement, Arts. 52 (2) and 53; UN Headquarters Agreement, s. 9; FAO Agreement, s. 7; ICAO Agreement, s. 4; UNESCO Agreement, Art. 6; ECA Agreement, s. 3.
2. This Article develops the principle of the inviolability of the Principal Office and the principle that it is under the control and authority of the Bank: cf. on this subject Notes 2 to 4 to Article 2. As to the definition of the Principal Office, see Art. 1 (h) and Note 4 thereto.
3. In pursuance of para. (1) of Article 3, the President of the Bank and the judicial authorities of the Host State may be expected to agree on standing arrangements ensuring the proper administration of justice - e.g. as regards the service of process or execution of judgments; such arrangements will determine the conditions under which judicial officers may enter the Principal Office. Similarly, arrangements should be made concerning the entry of police officers - see Note 3 to Article 4.

4. The duty of the Bank to prevent the Principal Office from becoming a refuge for offenders etc., must not prejudice its power to insist, where required, on the access to, and presence in, that Office of persons whose Governments may not be on friendly relations with the Host Government - see Art. 6 (2) and (4).

Article 4

(1) The appropriate authorities of (the Host State) shall exercise due diligence to ensure that the tranquillity of the Principal Office is not disturbed by the unauthorized entry by any person or group of persons from outside or by disturbances in its immediate vicinity, and shall cause to provide on the boundaries of the Principal Office such police protection as is required for these purposes.

(2) If so required by the President, the appropriate authorities of (the Host State) shall provide a sufficient number of police for the preservation of law and order in the Principal Office and for the removal therefrom of any person or group of persons as requested under the authority of the President.

Notes

1. See UN Headquarters Agreement, s. 16; FAO Agreement, s. 8; UNESCO Agreement, Art. 7; ECA Agreement, s. 4.
2. The provisions of this Article are a development of the principle that while the Principal Office is inviolable and under the control and authority of the Bank, the maintenance of law and order therein ultimately rests with the Host Government; see Notes 2 to 4 to Article 2. As to the definition of the Principal Office, see Art. 1 (h) and Note 4 thereto.
3. In pursuance of Article 4 the President of the Bank and the local police authorities may be expected to agree on standing arrangements for the preservation of law and order in the Principal Office and its vicinity and the protection of that Office from disturbance. They will determine the conditions under which local police may enter the Principal Office, - cf. Art.3 (1) and Note 3 thereto.

Article 5

The Government shall take whatever action may be required to ensure that the Bank shall not be dispossessed of its rights in the Principal Office nor deprived of the enjoyment of such rights except with its express consent.

Notes

1. See UN Headquarters Agreement, ss. 3 and 22; FAO Agreement, s. 2 (b); UNESCO Agreement, Art. 3.
2. While Art. 4 deals with the right of the Bank to the protection of the Principal Office from actual disturbance, Art. 5 deals with protection from interference with its legal rights and their use. Thus, the final wording of this Article will depend on the nature and scope of such rights which, it is expected, will be conferred on the Bank by the Act referred to in the Preamble and discussed in Note 5 thereto. As to the definition of the Principal Office, see Art. 1 (h) and Note 4 thereto.
3. The term "dispossessed" refers to acts as a result of which the Bank would lose the rights or anyone of them altogether; it would be "deprived of the enjoyment" of such rights by any action which, while falling short of dispossession, would reduce in law or fact the scope or use of such rights.

III. ACCESS AND RESIDENCE

Article 6

- (1) The appropriate authorities of (the Host State) shall not impede in any way the transit to or from the Principal Office of any person proceeding there to perform his official duties or at the invitation of the Bank.
- (2) To this end, the Government shall authorize, without delay, the entry and residence in (the Host State) and egress therefrom, while they are engaged on business with the Bank, of:
- (a) Governors of the Bank, their Alternates, and other representatives of member governments participating in the work of the Bank;
 - (b) Directors of the Bank and their Alternates;
 - (c) the President, Vice-Presidents and other officials of the Bank;
 - (d) persons other than officials of the Bank performing missions for the Bank;
 - (e) other persons invited under the authority of the President to visit or to perform their duties at the Principal Office; and
 - (f) members of the family and personal employees of the persons referred to in sub-paragraphs (b) to (d) of this paragraph, while the latter are engaged on business with the Bank.

(3) Visas for persons referred to in paragraph (2) of this Article, where required, shall be granted promptly and free of charge.

(4) No measure excluding or restricting the residence in (the Host State) of any such person shall be taken on account of any activities performed by him in his official capacity. In case of abuse of privilege by any such person in activities in (the Host State) outside that capacity, measures for excluding or restricting his residence there may only be taken after prior consultation of the Minister for Foreign Affairs of (the Host State) with the President.

(5) The provisions of this Article shall not apply to general interruptions of transport. Nor shall they imply exemption from the obligation to produce reasonable evidence to establish that persons claiming the rights granted under this Article are included in the categories specified in paragraph (2) thereof nor from the reasonable application of quarantine and health regulations.

Notes

1. See UN Headquarters Agreement, ss. 11 to 14; FAO Agreement, s.22; ECLA Agreement, s.12; ECAFE Agreement, s.9; UNESCO Agreement, Art.9; ECA Agreement, s.9.
2. Unhindered transit to and from the Principal Office (cf. definition in Art. 1(h) and Note 4 thereto) of all persons proceeding there on the Bank's business in its widest sense is essential if the activities of the Bank are to be effectively organized and transacted without let or hindrance. This implies not only (i) access to and egress from the Principal Office (para. (1)), but also (ii) the right to enter, and sojourn in, the territory of the Host State (para. (2)), as

the first cannot be made effective without the second. On the other hand, the right to reside must be granted by the Host State only to the extent and for the duration required by the business of the person concerned with the Bank, in other words - as the beginning of para. (2) provides - solely for the purpose of the Bank's business. If that right is abused, the authorities of the Host State may - as is envisaged in para. (4), second sentence - take measures excluding or restricting the residence of the person concerned, though in such a case prior consultation between the President of the Bank and the Host Government at a high level is required. The provisions of Article 6 are inspired by Art. 9 of the UNESCO Agreement.

3. According to para. (3), the authorities of the Host State may require a visa for entry of the persons enumerated in para. (2) but must grant it promptly and free of charge. In any event, they may require - under para. 5 - at all times reasonable evidence that a person claiming rights under Art. 6 comes within one of the categories specified in para. (2).
4. The powers of the Bank under Article 6 must not be abused. It will be recalled that the Bank, its President, Vice-Presidents and staff are enjoined not to interfere in the political affairs of any member and that only economic considerations shall be relevant for their decisions (ADB Agreement, Art. 38 (2)). On the other hand, the Host Government must fully respect the international personality and independence of the Bank (cf. Notes 2 to 4 to Art. 2) and apply the provisions of Art. 6 irrespective of any political considerations, and, in particular, irrespective of the relations existing between the Host Government and the government of the person concerned. The meaning of para. (4), first sentence (cf. among others, United Nations Headquarters Agreement, s. 12); is that the Bank, an African institution, is the sole judge of the desirability or need for any person

to have access to its Principal Office and that the authorities of the Host State should not attempt to exercise that judgement in its stead. Thus certain Headquarters Agreements specifically envisage - as indeed is required in practice - that resident government representatives at their headquarters may include nationals of States which are not recognized by the Host State (cf. United Nations Headquarters Agreement, s.15; Food and Agriculture Organization Agreement, s. 24 (b)).

Para. (2) (c): As to "officials", see definition in Art.1 (f) and Note 3 thereto.

Para. (2) (d) includes experts and consultants of the Bank but may also include, for instance, experts and consultants of some other institution performing a (joint) mission for the Bank.

Para. (2) (e) includes not only occasional visitors but also, for instance, permanent representatives of other institutions accredited to the Bank.

IV. COMMUNICATIONS, TRANSPORT, PUBLIC SERVICES

AND UTILITIES

Article 7

The Bank shall enjoy for its official communications treatment not less favourable than that accorded by the Government to any other government - including diplomatic missions of such other government - or to any other international or African organization in the matter of priorities and rates on mails, cables, telegrams, radiograms, telephotos, telephones and other communications; and press rates for information to press, radio or television.

Notes

1. See ADB Agreement, Art. 55; General Convention, s. 9; Agencies Convention, s. 11; FAO Agreement, s. 11; UNESCO Agreement, Art.10 (1); ECA Agreement, s.5.
2. Arts. 7 to 11 of the Headquarters Agreement follow the general pattern of the corresponding provisions of other agreements of a similar nature. They are designed to give more detailed expression to the international personality of the Bank (cf. ADB Agreement, Art.50, and Notes 2 to 4 to Art. 2 above) and to ensure the efficient operation of its Principal Office. In particular, Arts. 7 and 10 lay down in detail the obligations of the Host Government resulting from Art. 55 of the ADB Agreement. Such obligations must be interpreted, at any given time, in conformity with the existing international treaty law. On the other hand, the Bank being an African institution, the Host Government is expected to extend to it additional exemptions, privileges and facilities accorded by that Government to other international or African organizations: cf. Note 7 to the Preamble and Art. 24.

Article 8

(1) All communications directed to the Bank, its President, Vice-Presidents or any officials at the Principal Office, and all outward official communications of the Bank, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference. Such immunity shall extend, without limitation by reason of this enumeration, to publications, documents, plans, blue-prints and sketches, still and moving pictures, films and sound recordings.

(2) The Bank shall have the right to use codes and to dispatch and receive official correspondence and, without limitation by reason of this enumeration, publications, documents, plans, blue-prints and sketches, still and moving pictures, films and sound recordings, either by courier or in sealed bags which shall have the same immunities, exemptions and privileges as diplomatic couriers and bags.

(3) Nothing in this Article shall be construed to preclude the adoption of appropriate precautions, particularly in the event of an emergency in the Host State, to be determined by agreement between the Bank and the Government and designed to prevent or avoid abuse of the immunities, exemptions and privileges provided in this Article.

Notes

1. See ADB Agreement, Art. 55; General Convention, s.10; United Nations Headquarters Agreement, Agencies Convention, s.12; FAO Agreement, s.13; UNESCO Agreement, Art.11; ECA Agreement, s.6.

2. As to the general nature of this Article, see Note 2 to Article 7. It will be noted that the prohibition of censorship applies, as regards incoming communications, to all communications directed to the Bank or its officers and officials at the Principal Office, not at any other address. As regards outward mail, only official communications of the Bank are protected. Further, attention is drawn to the obligation of the Bank to agree on appropriate precautions designed to prevent abuse of the provisions of Art. 8; it is similar to its obligation to prevent the Principal Office from becoming a refuge for offenders of the law specified in Art. 3 (2) and to its general obligation to co-operate with the authorities of the Host State under Art. 20.

Article 9

The Bank shall have the authority to install and operate at the Principal Office for its exclusive official use a radio sending and receiving station or stations subject to the provisions of Article 44 of the International Telecommunications Convention relating to harmful interference. At the request of the Bank, the Government shall assign suitable and adequate frequencies for the operation of any such station. It shall communicate such frequencies without delay to the International Frequency Registration Board.

Notes

1. See ECAFE Agreement, s. 14; ECA Agreement, s. 7.
2. As to the general nature of this Article, see Note 2 to Article 7.
3. Art. 44 of the International Telecommunications Convention, signed at Atlantic City on 2 October 1947 (UNTS, vol. 193, No. 2616), provides that all stations must be established and operated in such a manner as not to result in harmful interference to other radio services or communications. It is the duty of each Member of the International Telecommunications Union to require any operating agency recognized by it to observe this rule.

Article 10

(1) The Bank shall be entitled, for its official purposes, to use transport operated by the Government at the rates and treatment not less favourable than that accorded to any other government - including diplomatic missions of such other government - or any other international or African organization.

(2) Aircraft operated by or for the Bank shall be exempt from all charges, except those for actual services rendered, and from fees or taxes incidental to the landing at, parking on or taking off from any aerodrome in (the Host State). Except as limited by the preceding sentence, nothing herein shall be construed as exempting such aircraft from full compliance with all rules and regulations governing the operation of flight into, within, and out of the territory of (the Host State).

Notes

1. See United Nations Headquarters Agreement, s. 5; ECA Agreement, s. 8.
2. As to the general nature of this Article, particularly important in view of the continent-wide responsibilities of the Bank, see Note 2 to Article 7.

Article 11

The appropriate authorities of (the Host State) shall exercise, to the extent requested by the President, the powers which they possess with respect to the supply of public services to ensure that the Principal Office shall be supplied on equitable terms with the necessary public services, including electricity, water, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection et cetera. In case of any interruption or threatened interruption of any such service, the appropriate authorities of (the Host State) shall consider the needs of the Bank as being of equal importance with the similar needs of essential agencies of the Government, and shall take steps accordingly to ensure that the work of the Bank is not prejudiced.

Notes

1. See United Nations Headquarters Agreement, s.17; ECAFE Agreements, s.24; ECA Agreement, s.16.
2. As to the general nature of this Article, see Note 2 to Art.7.
3. The ECAFE Agreement provides, in addition, that the Host Government shall be responsible for all charges arising out of the installations, maintenance and repair at the headquarters of all public services (s. 24 (b)).

V. FINANCIAL FACILITIES AND TAXATION

Article 12

- (1) Without being restricted by restrictions, regulations, controls or moratoria of any nature, the Bank may freely:
- (a) acquire negotiable currencies from authorized banks, hold them and use them; operate accounts in any currency; and through authorized channels acquire, hold and dispose of funds, securities and gold; and
 - (b) transfer its funds, securities, gold and currencies, from or to any other country, or within (the Host State).
- (2) In exercising its rights under this Article, the Bank shall pay due regard to any representations made by the Government and shall give effect to such representations so far as is possible while safeguarding the interests of the Bank.
- (3) The Government shall assist the Bank to obtain the most favourable conditions as regards exchange rates, banking commissions on exchange transactions and the like.

Notes

1. See ADB Agreement, Arts. 27 and 54; Agencies Convention, ss. 7 and 8; FAO Agreement, Art. IX; UNESCO Agreement, Art.17; ECLA Agreement, Art. V; ECAFE Agreement, s. 10.
2. This Article is intended to give more detailed expression to the principle laid down in Art. 54 of the ADB Agreement and to broaden, where required, the ambit of the provisions of Art. 27 of that Agreement which are primarily designed to

ensure the effectiveness of the substantive operations and other activities of the Bank, not its administrative transactions. As to the relationship between this Article and the provisions of the ADB Agreement, see Note 6 to the Preamble and Art. 21.

Article 13

The Bank, its property, other assets, income as well as its operations and transactions shall be exempt from all taxation and from all customs duties. This exemption shall apply in particular, but without limitation by reason of this enumeration:

- (a) to the following direct taxes : on the understanding, however, that the Bank will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) to the following indirect taxes, levies and duties on operations and transactions: (e.g. registration tax, consumption tax; and excise duties and taxes on the sale of movable and immovable property on the understanding that the Bank will claim this exemption only in respect of important purchases for its official use); and
- (c) to all customs duties and other levies, prohibitions and restrictions on imports and exports in respect of all articles imported and exported by the Bank for official purposes; such articles shall include, without limitation by reason of this enumeration:
 - (i) publications, still and moving pictures, and film and sound recordings; and
 - (ii) the importation of motor vehicles and spare parts thereof, required for its official purposes. The

Government shall grant exemption also in respect of allotments of petrol or other required fuels and lubricating oils for each vehicle in quantities prevailing for heads of diplomatic missions in (the Host State).

Notes

1. See ADB Agreement, Art. 57 (1); General Convention, ss. 7 and 8; Agencies Convention, ss. 9 and 10; FAO Agreement, s. 19; ECLA Agreement, s. 10; ECAFE Agreement, ss. 8 and 9; UNESCO Agreement, Arts. 15 and 16.
2. This Article is designed to give expression, in terms of national legislation of the Host State, to the principle laid down in Art.57 (1) of the ADB Agreement according to which the Bank, its property etc., shall be exempt from all taxation - present and future. The first sentence of Art.13 reiterates this principle, while the remainder of that Article depends on the existing taxation system of the Host State. Future taxes or taxes which have been omitted by inadvertence from the enumeration contained in sub-paragraphs (a) or (b) would come under the operation of the principle expressed in the first sentence. While in its present and provisional form the Article is largely inspired by s. 19 of the FAO Agreement, it incorporates rules recognized in the case of most - and notably of regional - international organizations. This applies, in particular, to the exemptions relating to purchase and sales taxes, importation of motor vehicles, petrol or publications.
3. As to the relationship between Article 13 and Article 57 of the ADB Agreement, see Note 6 to the Preamble and Art. 21. It should be added that, the Bank being an African institution, the Host Government is expected to extend to it additional exemptions, privileges and facilities accorded by that Government to other international or African organizations (cf. Note 7 to the Preamble and Art. 24).

VI. GOVERNORS AND DIRECTORS OF THE BANK AND THEIR ALTERNATES,
OTHER REPRESENTATIVES OF MEMBER GOVERNMENTS

Article 14

(1) Governors and Directors of the Bank shall be entitled in the territory of (the Host State), while exercising their functions and during their journey to and from the Principal Office, to the same immunities, exemptions and privileges as are accorded to diplomatic envoys of comparable rank in conformity with international law.

(2) Alternates of Governors of the Bank, other representatives of governments participating in its work and Alternates of Directors of the Bank shall, while exercising their functions and during their journey to and from the Principal Office, enjoy in the territory of (the Host State) the immunities, exemptions and privileges normally enjoyed by members of diplomatic missions of comparable rank.

(3) Directors of the Bank and their Alternates, if resident in (the Host State), shall be entitled in the territory of (the Host State) to the same immunities, exemptions and privileges as the Government accords to resident diplomatic representatives of comparable rank.

(4) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to its Directors and their Alternates.

(5) The provisions of paragraphs (1) to (3) of this Article shall not apply to nationals of (the Host State).

Notes

1. See ADB Agreement, Arts. 56 (1) and 57 (2); Agencies Convention, ss. 13 and 17; FAO Agreement, ss. 24 and 25; UNESCO Agreement, Art. 18; ECAFE Agreement, s. 15; ECA Agreement, s.10.
2. The purpose of this Article is to define in greater detail than is done in Arts. 56 and 57 of the ADB Agreement the regime of immunities, exemptions and privileges which, in accordance with international practice as exemplified in similar agreements, the Host Government shall accord to the Governors and Directors of the Bank, their Alternates, and representatives of member Governments other than Governors or their Alternates (cf. Art.1 (i)). As is usual, this is done by a reference to immunities, exemptions and privileges accorded by the Host Government to diplomatic agents of comparable rank. Thus, for instance, such a regime requires that Governors and Directors are accorded appropriate immunities, exemptions and privileges during the entire period of time that they are in the Host State in order to exercise their functions and, in addition, a reasonable time for entry and exit.
3. It is envisaged that, as is mostly the case, the regime provided for should not apply to nationals of the Host State - subject, however, to the exemption from tax on salaries and emoluments which all Directors and Alternates shall enjoy irrespective of their nationality (cf. ADB Agreement, Art. 57 (2), which admits taxation only in the case of the non-professional staff of the Bank).
4. As to the relationship between Art. 14 and Arts. 56 (1) and 57 (2) of the ADB Agreement, see Note 6 to the Preamble and Art. 21. Also, the Bank being an African institution, the Host Government may be expected to accord to the persons concerned additional immunities, exemptions and privileges granted by that Government to representatives of comparable rank to other international or African organizations: see Note 7 to the Preamble and Art. 24.

5. The position of Directors of the Bank and their Alternates, who are resident in the Host State is governed by para. (3), not paras. (1) and (2), of Art. 14 which assimilates them to resident diplomatic representatives of comparable rank thus conferring on them a more comprehensive regime. (See, however, Note 3 above).

VII. OFFICIALS, EXPERTS AND CONSULTANTS OF THE BANK

Article 15

- (1) Officials of the Bank shall enjoy in the territory of (the Host State) the following immunities, exemptions and privileges:
- (a) immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity; such immunity to continue notwithstanding that the person concerned may have ceased to be an official of the Bank;
 - (b) immunity from personal arrest or detention;
 - (c) immunity from seizure of their personal and official baggage;
 - (d) in the case of officials designated by the President as professional staff members, exemption from tax on or in respect of salaries and emoluments paid by the Bank;
 - (e) immunity from national service obligations;
 - (f) immunity, together with members of their families and their personal employees, from immigration restrictions and alien restrictions;
 - (g) where they are not nationals of (the Host State), the same privileges in respect of exchange facilities as are accorded by the Government to members of diplomatic missions of comparable rank;

- (h) where they are not nationals or permanent foreign residents of (the Host State), exemption from any form of direct taxation on income derived from sources outside (the Host State); the freedom to maintain within (the Host State) or elsewhere foreign currency accounts, foreign securities and other movable or immovable property; and while employed by the Bank in (the Host State) and upon the termination of such employment, the right to take out of (the Host State) funds in any non-(Host State) currency without any restrictions or limitations, provided that the official concerned can show good cause for his lawful possession of such funds.
- (i) the right to import, in a single or separate shipments, free of duty and other levies, prohibitions or restrictions on imports, their furniture and effects within twelve months after first taking up their permanent post in (the Host State) or - in special circumstances - within a much longer period as may be required and, where they are not nationals or permanent foreign residents of (the Host State), the same privileges and facilities as regards the importation, transfer and replacement of motor vehicles and spare parts thereof and the purchase or supply of petrol as are in force in (the Host State) for the resident members of diplomatic missions of comparable rank;

- (j) the same repatriation facilities for themselves, members of their families and their employees, and the same right to protection by the authorities of (the Host State) in time of international crisis or national emergency as members of diplomatic missions; and
- (k) other exemptions and privileges which are or may be accorded by the Government to members of diplomatic missions of comparable rank or to officials of comparable rank of other international or African organizations.

(2) The Government shall assist the Bank in providing proper housing facilities for its officials and shall endeavour to safeguard them against the activities of speculators in real estate.

Notes

1. See ADB Agreement, Arts. 56 (1) and 57 (2); General Convention, ss. 17 to 19; Agencies Convention, ss. 18 to 21; FAO Agreement, ss. 27 and 28; ECLA Agreement, s.13; ECAFE Agreement, s. 17; UNESCO Agreement, Arts. 22 to 23; ECA Agreement, s. 11.
2. Para. (1) of this Article defines in detail the regime of immunities, exemptions and privileges which, in conformity with international practice as exemplified in similar agreements, the Host Government shall accord to "officials" of the Bank. As to the relationship of this paragraph to Arts. 56 (1) and 57 (2) of the ADB Agreement, see Note 6 to the Preamble and Art. 21.
 - (a) "Officials" within the meaning of this Agreement and, in particular, of this paragraph are all officers, officials, employees and other staff members of the Bank except those who are recruited locally and are assigned to hourly rates (cf. Art. 1 (f) and Note 3 thereto). Thus the term includes the President, the Vice-Presidents and senior officials of the Bank for

whom, however, an additional regime - as is customary - is provided in Art. 16. The regime for experts and consultants is laid down in Art. 17.

(b) Certain immunities, exemptions and privileges do not apply in the case of officials who are nationals of the Host State, its permanent foreign residents, or who are not designated by the President as professional staff members - cf. sub-paras. (d) and (f) to (h). This, again, is based on international practice or on Art. 57 (2) of the ADB Agreement, as the case may be.

3. As regards the exemption from national service obligations provided for in sub-para. (e), the Host Government may require that its application should be limited to officials whose names have been, by reason of their duties, placed on a list compiled by the President and communicated to the appropriate authorities of the Host State (cf. Agencies Convention, s. 20; FAO Agreement, s. 27 (g); UNESCO Agreement, Art. 22 (c)).
4. Sub-para. (k) is based on the consideration that the Bank is an African institution and that, therefore, the Host Government should be ready to extend to its officials additional immunities, exemptions and privileges which it accords to other international or African organizations - see Note 7 to the Preamble and Art. 24 and the Notes thereto.

Article 16

(1) In addition to the immunities, exemptions and privileges specified in paragraph (1) of Article 15, the President and, in his absence, the Vice-President acting on his behalf, shall be accorded in respect of himself, members of his family and his personal employees, the immunities, exemptions and privileges accorded to heads of diplomatic missions in conformity with international law.

(2) In addition to the immunities, exemptions and privileges specified in paragraph (1) of Article 15, the Vice-President shall enjoy the immunities, exemptions and privileges the Government accords to resident diplomatic representatives of comparable rank.

(3) In addition to the immunities, exemptions and privileges specified in paragraph (1) of Article 15, officials of the Bank with the rank of Director, Head of Division and such other senior officials of the Bank as may be designated by the President from time to time on the grounds of their responsibilities in the Bank shall be accorded immunities, exemptions and privileges not less than those accorded to resident members of diplomatic missions. The provisions of this paragraph shall, however, not apply to nationals of (the Host State).

Notes

1. See Agencies Convention, s. 21; ICAO Agreement, s. 19; FAO Agreement, s. 28; UNESCO Agreement, Art. 19; ECA Agreement, s. 13.

2. The chief executive officer of the Bank, an autonomous inter-governmental organization, as well as his deputies (cf. ADB Agreement, Art. 37) must be assimilated, respectively, to the head of diplomatic mission and to diplomatic representatives of comparable rank as regards the immunities, exemptions and privileges which they enjoy. This principle on which para. (1) of Art. 16 is based, is universally accepted in present-day international practice.
3. Para. (3): Equally, it is generally accepted that senior officials of an international organization are assimilated to members of diplomatic missions and granted full diplomatic status. Some headquarters agreements list the corresponding exemptions and privileges explicitly. Thus, for instance, the FAO Agreement provides that its officials may import free of duty "reasonable quantities ... of foodstuffs and other articles for personal use and consumption" (s. 27 (f) (ii)). The ICAO Agreement grants for senior officials (i) the privilege to import vehicles free of duty "for their personal and family use", including motor vehicles currently required; and (ii) the exemption from excise duty and/or sales tax on spirits, wine and tobacco (s. 20 (g) to (i); see also UNESCO Agreement, Art. 19 (2)).

Article 17

(1) Experts and consultants performing missions for the Bank who are resident in (the Host State), shall enjoy the immunities, exemptions and privileges specified in paragraph (1) of Article 15 and may be designated by the President, on the ground of their responsibilities in the Bank, as entitled to the immunities, exemptions, privileges and facilities specified in paragraph (3) of Article 16.

(2) Other experts and consultants performing missions for the Bank shall be accorded by (the Host State) such immunities, exemptions and privileges as are, in the opinion of the President, necessary for the exercise of their functions during the period of their mission, including the time spent on journeys in connexion therewith.

Notes

1. See ADB Agreement, Art. 56 (2); FAO Agreement, ss. 30 and 31; UNESCO Agreement, Art. 25; ECAFE Agreement, s. 21.
2. The provisions of this Article draw a distinction between experts and consultants who are resident in the Host State and other experts and consultants. The former may be expected to perform their daily duties normally within the hierarchy of the services of the Bank. As a matter of administrative policy and discipline their assimilation to the corresponding officials is therefore required - particularly as, in view of the nature of its varied functions, the Bank is bound to rely on a number of such experts and consultants. Such assimilation is in conformity with the FAO and ECAFE provisions and is, in fact, widely accorded in practice.

Article 18

All official of the Bank and its experts and consultants resident in (the Host State) shall be provided by the appropriate authorities of (the Host State) with an identity card certifying the facts that they are officials of the Bank or its experts or consultants - as the case may be - and that they are entitled to the immunities, exemptions and privileges provided in this Agreement.

Notes

1. See, among others, ECA Agreement, s. 12.
2. As to the definition "officials", see Art. 1 (f) and Note 3 thereto as well as Note 2 to Art. 15; as to the reasons for the distinction between experts and consultants who are resident in the Host State and other experts and consultants, see Note 2 to Art. 17.
3. The practice of issuing identity cards to officials of international organizations is commonly followed by their respective Host Governments. Such cards, among other purposes, provide appropriate evidence for frontier formalities or access to the Principal Office: cf. Art. 5(5). Many Host Governments issue different types of cards - cards for officials who are assimilated to heads of diplomatic missions; for those assimilated to members of diplomatic missions; for members of families of officials or their personal employees; etc.

Article 19

The immunities, exemptions and privileges accorded in Articles 15 to 17 of this Agreement are granted in the interests of the Bank and not for the personal benefit of the persons concerned. The President shall waive the immunity of any such person in any case where, in his opinion, such immunity would impede the course of justice and can be waived without prejudice to the interests of the Bank.

Note

See ADB Agreement, Art.59; ECA Agreement, s. 14 etc. The Article is standard practice and designed to extend the application of the provisions of Art. 59 of the ADB Agreement to all immunities, exemptions and privileges granted under the Headquarters Agreement.

VIII. GENERAL PROVISIONS

Article 20

The Bank, its President, Vice-President and other officials shall co-operate at all times with the appropriate authorities of (the Host State) to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connexion with the immunities, exemptions and privileges accorded by virtue of the ADB Agreement or of this Agreement. Should the Government consider that an abuse has occurred, the President shall upon request consult with the appropriate authorities of (the Host State) without delay.

Notes

1. See Agencies Convention, ss. 23 and 24; FAO Agreement, s. 29 (b); UNESCO Agreement, Art. 26; ECAFE Agreement, s. 20 (c); ECA Agreement, s. 15.
2. As to the definition of "officials", see Art. 1 (f) and Note 3 thereto as well as Note 2 to Art. 15. See also Notes 2 to 4 to Art. 6 concerning the nature of the powers, rights, immunities, exemptions, etc. conferred by the Headquarters Agreement on the Bank and its officials.
3. The international obligation of the Bank to co-operate, and to impose on its officials the duty to co-operate, with the authorities of the Host State is categorical. As a matter of internal discipline, the execution of this duty is, of course, subject to the Staff Regulations of the Bank and must be consistent with their provisions which, among others, provide that staff members shall carry out their functions and regulate their conduct with the interests of the Bank only in view and that they are responsible to the President alone in the exercise of their duties (cf. ADB Staff Regulations 2, (1) to (3)).

IX. INTERPRETATION, APPLICATION, AMENDMENT

Article 21

The provisions of the ADB Agreement and of this Agreement shall, where they relate to the same subject matter, be treated wherever possible as complementary, so that the provisions of both shall apply and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this Agreement shall prevail.

Notes

1. See United Nations Headquarters Agreement, s. 26; ECLA Agreement, s. 20 (b); ECAFE Agreement, s. 25 (b); ECA Agreement, s. 17.
2. The relationship between the ADB Agreement and the Headquarters Agreement is discussed in Note 6 to the Preamble. Art. 21 makes it quite clear that these two Agreements are complementary. Thus, certain matters - e.g. the legal status of the Bank in the Host State, its immunity from legal process, etc. - are dealt with solely in the ADB Agreement which, of course, is directly binding on the Host State. Only in the case of an absolute conflict between the two, shall the provisions of the Headquarters Agreement prevail.

Article 22

- (1) The Government and the Bank may enter into such supplementary agreements as may be necessary to fulfill the purpose of this Agreement.
- (2) Consultations with respect to any amendment to this Agreement shall be entered into at the request of either Party thereto.

Notes

1. See FAO Agreement, ss. 34 and 36; ICAO Agreement, s. 36; ECLA Agreement, ss. 20 and 22; ECAFE Agreement, ss. 25 and 27 (b); UNESCO Agreement, Art. 31; ECA Agreement, ss. 18 and 22.
2. Identical or similar provisions in headquarters agreements are common. The "purpose" of the ADB Headquarters Agreement is clearly described in the third recitals of the Preamble; as to the treaty-making power of the Bank, see Note 1 to the Preamble.
3. Para. (2) makes it clear that neither Party to the Agreement may refuse to comply with the request of the other to consult concerning any amendments thereto. To become operative, such amendment requires accord between both parties.

Article 23

Wherever this Agreement imposes obligations on the appropriate authorities of (the Host State), ultimate responsibility for the fulfilment of such obligations shall rest with the Government.

Notes

1. See United Nations Headquarters Agreement, s. 25; FAO Agreement, s. 36 (d); ECLA Agreement, s. 22 (d); ECAFE Agreement, s. 27 (d); ECA Agreement, s. 19.
2. The purpose of this Article is to render it clear that the Host Government itself cannot escape liability under the Headquarters Agreement by representing that the latter assigns responsibility for the execution of any provisions thereof, not to that Government, but to its authorities.

Article 24

This Agreement shall be interpreted in the light of its primary purpose to enable the Bank fully and efficiently to fulfil its purpose and discharge its functions. To the extent that this is reasonably required therefore, the Government will, in applying this Agreement, extend to the Bank, which is an institution common to all African countries, and to its officials all immunities, exemptions and privileges which it grants, or may grant, to other international or African organizations and their officials.

Notes

1. See UN Headquarters Agreement, s. 27; FAO Agreement, s. 36 (c); ICAO Agreement, s. 35; ECLA Agreement, s. 22 (c); ECAFE Agreement, s. 27 (c); ECA Agreement, S. 20.
2. The first sentence of the Article follows, in the main, the provisions quoted in Note 1. The considerations underlying the second sentence are discussed in Note 7 to the Preamble and recalled in the Notes to Arts. 15 (k) and 24 and elsewhere. The principle on which the provision is based is that the Bank, being an organ of regional co-operation, may as an expression of African solidarity expect to be granted by the Host Government all immunities, exemptions and privileges actually granted by that Government and reasonably required by the Bank in order that it may fully and efficiently fulfil its purpose and discharge its functions (cf. ADB Agreement, Arts. 1 and 2).
3. The Article refers to "African" organizations, as distinct from "international" organizations, so as to include African organizations of a "community" character. The latter, it is often maintained, are not, strictly speaking, "international".

X. SETTLEMENT OF DISPUTES

Article 25

Any dispute between the Bank and (the Host State) concerning the interpretation or application of this Agreement or of any supplementary agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to arbitration by a tribunal of three arbitrators, one to be appointed by the President; one to be appointed by (the Host Government); and the third arbitrator to be chosen by the two, or if they should fail to agree on his appointment, by the President of the International Court of Justice or, should the President be a national of (the Host State), by the Vice-President of that Court.

Notes

1. See General Convention, s. 30; UN Headquarters Agreement, s. 21; Agencies Convention, s. 22; ICAO Convention, s. 31; FAO Agreement, s. 35; ECLA Agreement, s. 21; ECAFE Agreement, s. 26; UNESCO Agreement, s. 29; ECA Agreement, s. 21.
2. This Article largely follows the text of the corresponding provisions of other headquarters agreements, but takes into account the text of Art. 15 of the ADB General Regulations as approved by the President of the International Court of Justice. It, too, will ultimately require his approval.
3. Since the Bank is not a specialized agency of the United Nations, it cannot avail itself of the procedure for seeking Advisory Opinions by the International Court of Justice.

XI. FINAL PROVISIONS

Article 26

This Agreement shall cease to be in force:

- (a) by mutual accord between the Parties thereto; and
- (b) if the Principal Office of the Bank within the meaning of Article 39 of the ADB Agreement is removed from the territory of (the Host State), except for such provisions of the present Agreement as may be applicable in connexion with the orderly termination of the activities of the Bank at its Principal Office in (the Host State) and disposal of its property and assets therein.

Note

See United Nations Headquarters Agreement, s. 24; FAO Agreement, s. 36 (e); ICAC Agreement, s. 34; ECLA Agreement, s. 22 (c); ECAFE Agreement, s. 27 (e); ECA Agreement, s. 23. The present text is inspired by the text of the FAO Agreement, s. 36 (e).

Article 27

(Provisional Application and Entry into Force: Pour Memoire)

Note

(The text of this Article will depend on the circumstance in which the Bank will take over its Principal Office).

(Final Clause)

IN FAITH WHEREOF the undersigned Plenipotentiaries, being duly authorized to that effect, have signed the present Agreement and have affixed thereto their Seals.

DONE in, this day of, in the
.....languages,these texts being equally authentic,
in two copies which shall remain deposited each with one Party to
the present Agreement.