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Treaty Series No. 5 (2007)

Convention

between the Government of the United Kingdom of Great Britain and
Northern Ireland, the Government of the French Republic, the
Government of the Federal Republic of Germany and the Government of
the Italian Republic on the Establishment of the Organisation for Joint
Armament Cooperation
(Organisation Conjointe de Cooperation en Matiere d'Armement)
OCCAR

Farnborough, 9 September 1998

[The United Kingdom instrument of ratification was deposited on 11 May 2000 and the Convention
entered into force for the United Kingdom on 28 January 2001]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
March 2007*

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**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE
GOVERNMENT OF THE FRENCH REPUBLIC, THE GOVERNMENT OF
THE FEDERAL REPUBLIC OF GERMANY AND THE GOVERNMENT OF
THE ITALIAN REPUBLIC ON THE ESTABLISHMENT OF THE
ORGANISATION FOR JOINT ARMAMENT COOPERATION
(Organisation Conjointe de Cooperation en Matiere d'Armement) OCCAR**

The Government of the United Kingdom of Great Britain and Northern Ireland,

The Government of the French Republic,

The Government of the Federal Republic of Germany and

The Government of the Italian Republic,

Wishing to increase their armaments cooperation in order to improve efficiency and reduce costs,

Considering that the attainment of the best ratio between cost (understood as life cycle cost) and efficiency for current and future co-operative programmes is an absolute necessity; and that to this end, new programme management methods must be developed and optimised, procedures for the granting of contracts made more effective, and the creation of transnational and truly integrated industrial prime contractors encouraged,

Wishing to achieve co-ordination of their long term requirements, wherever military imperatives allow this, as well as a common technology investment programme, based on the principles of complementarity, reciprocity and balance,

Deeming it necessary, in cooperative programmes, in order to improve the competitiveness of the European defence technological and industrial base, to take advantage of their industrial poles of excellence, to promote links between companies, and for competition to be organised in accordance with uniform rules adopted in accordance with the provisions of this Convention,

Convinced that a strengthening of their co-operation in defence equipment will contribute to the establishment of a European security and defence identity and is a practical step towards the creation of a European Armaments Agency,

Wishing to associate other European states which accept all the provisions of this Convention,

Have agreed as follows:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

A European organisation, the “Organisation for Joint Armament Co-operation” (Organisation Conjointe de Coopération en matière d'Armement (OCCAR)) is hereby established.

ARTICLE 2

The members of OCCAR, hereinafter referred to as the “Member States”, are those States which become parties to this Convention in accordance with the provisions of Chapter XV.

ARTICLE 3

The headquarters of OCCAR shall be in Bonn, Federal Republic of Germany.

ARTICLE 4

The official languages of OCCAR shall be English, French, German and Italian.

CHAPTER II

OBJECTIVES OF COOPERATION AND THE ROLE OF OCCAR

ARTICLE 5

To enable a strengthening of the competitiveness of European defence technological and the industrial base, the Member States renounce, in their cooperation, the analytical calculation of industrial *juste retour* on a programme-by-programme basis, and replace it by the pursuit of an overall multi-programme/multi-year balance. Transparency shall be ensured by annual progress reports for each programme. During an initial period, the transitional provisions in Annex III shall apply.

This co-operation will enhance the creation, between Member States, of genuine industrial and technological complementarity in the relevant fields, thereby guaranteeing support for their armed forces under all circumstances, in both the short and medium term.

ARTICLE 6

When meeting the requirements of its armed forces, each Member State shall give preference to equipment in whose development it has participated within OCCAR.

ARTICLE 7

OCCAR shall coordinate, control and implement those armament programmes that are assigned to it by Member States, and coordinate and promote joint activities for the future, thereby improving the effectiveness of project management in collaborative projects, in terms of cost, schedule and performance.

ARTICLE 8

OCCAR shall fulfil the following tasks, and such other functions as the Member States may assign to it:

- (a) management of current and future cooperative programmes, which may include configuration control and in-service support, as well as research activities;
- (b) management of those national programmes of Member States that are assigned to it;
- (c) preparation of common technical specifications for the development and procurement of jointly defined equipment;
- (d) coordination and planning of joint research activities as well as, in cooperation with appropriate military staffs, studies of technical solutions to meet future operational requirements;
- (e) coordination of national decisions concerning the common industrial base and common technologies;
- (f) coordination of both capital investments and the use of test facilities.

CHAPTER III

GENERAL ORGANISATION

ARTICLE 9

OCCAR consists of the Board of Supervisors (BoS), and the Executive Administration (EA).

CHAPTER IV

THE BOARD OF SUPERVISORS

ARTICLE 10

The BoS shall be the highest decision-making level within OCCAR.

ARTICLE 11

The BoS shall direct and supervise the EA and all committees.

ARTICLE 12

The BoS shall decide all matters concerning the implementation of this Convention including:

- (a) recommendations for the admission of new Member States;
- (b) assignment of a programme to OCCAR;
- (c) establishment or dissolution of committees referred to in Article 17;
- (d) preparations for future tasks and programmes, where these cannot be prepared by the committees;
- (e) decisions concerning any financial questions affecting OCCAR, in particular approval of the administrative and operational budgets and the annual financial reports, as well as decisions connected with the financial and accounting regulations and the management of the organisation;
- (f) procedures and rules for the awarding of contracts, as well as the standard contract clauses and conditions. The BoS is responsible for decisions

concerning the awarding of contracts and approves them when such decisions have not been delegated to a competent committee created for this purpose;

- (g) security procedures;
- (h) principles and operating rules for OCCAR, including the staff and financial regulations for the EA;
- (i) monitoring the application of OCCAR regulations, including regulations on open competition and respect for the reciprocity principle in Article 24 (3); and
- (j) appointment of auditors under Article 36.

ARTICLE 13

The BoS shall adopt such regulations consistent with the provisions of this Convention as are necessary for the fulfilment of its responsibilities.

ARTICLE 14

1. The BoS shall meet twice a year, and otherwise as required at the request of one or more Member States. It shall elect from amongst its members a chairperson who shall serve for a term of one year renewable only once. It shall adopt its own rules of procedures.
2. The BoS secretariat functions shall be performed by the EA.

ARTICLE 15

1. Each Member State shall have a representative on the BoS with the right to vote. The representatives of the Member States shall be the ministers of defence or their delegates, who shall be entitled to be accompanied by staff, including representatives from their Armed Forces staffs. The Director of the EA and the Deputy Director of the EA shall be entitled to attend BoS meetings, but not vote. The BoS may, if necessary, invite specialists from Member States, from the EA or other organisations involved in multilateral defence cooperation in which the Member States are participating;
2. When the BoS has to take decisions concerning a programme in which not all OCCAR Member States are participating, the decisions shall be taken by the representatives of those Member States which are participating in the programme.

ARTICLE 16

The BoS shall appoint the Director of the EA and his/her Deputy as well as other senior EA personnel. It shall approve the staff list of the EA. The Director shall be appointed for three years, renewable once for up to three years.

ARTICLE 17

1. The BoS may delegate certain functions to the appropriate committees, except those referred to in Article 12 (a), (b), (c) and (j). The committees include, in particular, a future task committee and the programme committees. Decisions concerning the execution of each individual programme shall be taken only by the representatives of those Member States that participate in the programme.
2. The programme committees shall supervise for the Member State participants in a programme, the running of one or several programmes.

ARTICLE 18

1. Subject to paragraph 2 below, all decisions referred to in this Convention shall be taken by the Member States unanimously, including questions for which no decision-making procedure has been or may be agreed.
2. The specific provisions in Annex IV shall apply.

CHAPTER V

EXECUTIVE ADMINISTRATION

ARTICLE 19

The EA is the standing executive body responsible for the implementation of the decisions of the BoS. It shall be headed by a Director appointed by the BoS.

ARTICLE 20

The EA shall comprise:

- (a) The Central Office, located in the headquarters of OCCAR, which consists of:

- the Directorate, which includes the Director, his/her Deputy and appropriate support staff,
 - divisions with responsibility for:
 - future tasks
 - acquisitions, contracts and finance matters,
 - administration;
- (b) The programme divisions, to each of which shall be assigned one or more programmes.

The programme divisions, in which there shall be no dual manning of posts, shall have the powers needed to undertake day-to-day management with the greatest possible degree of autonomy, top priority being given to performance and risk management, value engineering and cost containment, in accordance with regulations adopted by the BoS.

To facilitate the operation of the programme divisions not co-located with the Central Office, staff from the Central Office may be deployed to the programme divisions.

ARTICLE 21

The Director of the EA shall be directly responsible to the BoS for the operation of the EA. His/her detailed responsibilities shall be specified in a document approved by the BoS.

ARTICLE 22

1. The staff of OCCAR shall be accorded the privileges and immunities set out in Annex I to this Convention. The BoS shall ensure that the number of posts established is limited to those whose functions require the concomitant privileges and immunities. "Staff" do not include seconded personnel not under contract to OCCAR who shall, for the purposes of Annex I, have the status of experts.

2. The staff regulations, and the pay and pension schemes of OCCAR, shall be based on the rules of the Coordinated Organisations (eg NATO, WEU).

3. Posts within the EA shall be filled by personnel who have the competence needed to enable the Organisation to fulfil its mission as efficiently as possible, taking due account of the participation of the Member States in current or future programmes.

4. No member of EA staff shall hold paid government employment or have other activities incompatible with their status as employees of OCCAR.

5. Members of EA staff shall each make a written declaration confirming their intention to conscientiously fulfil the tasks for which they are responsible as well as their willingness neither to seek nor to accept instructions associated with their functions from any government nor from any authority outside of OCCAR, and to refrain from any act that is incompatible with their status as employees of OCCAR. The Director and the Deputy Director of the EA shall make this declaration in front of the BoS.

6. Each Member State undertakes to respect the exclusively international character of the functions of Director and of the other staff of the EA.

CHAPTER VI

PROCUREMENT PRINCIPLES

ARTICLE 23

1. The detailed OCCAR rules and procedures for procurement shall be the subject of a regulation adopted by the BoS following proposals by the Director of the EA or by Member States. They shall apply to all contracts awarded by OCCAR.

2. For the conduct of programmes that OCCAR manages, and particularly in relation to the armament-related activities (research, development, industrialisation, production, acceptance into service and in-service support), the rules contained in contracts and procedures shall comply with the procurement principles laid down in Articles 24 to 30.

ARTICLE 24

1. Subject to the provisions of this article, contracts and sub-contracts shall generally be awarded after competitive tendering.

2. Competitive tendering shall be conducted in accordance with the objectives and principles set out in Chapter II of this Convention.

3. With the unanimous agreement of the participants in a programme, competitive tendering may be extended outside the Western European Armament Group States provided the principle of reciprocity applies.

4. To comply with defence and security requirements, or to improve the competitiveness of the European defence technological and industrial base, competitive tendering and the award of contracts, and especially contracts for armament-related research and technology activities, may be limited to companies,

institutes, agencies or appropriate institutions under the jurisdiction of a Member State participating in the programme concerned.

5. OCCAR shall aim to adopt best practices for procurement and shall work with Member States to benchmark procurement practices against the highest standards.

6. The BoS shall monitor the application of the competitive tendering regulations, and decide if the reciprocity principle is being respected in practice by states that are not members of the Western European Armament Group.

ARTICLE 25

When open to competitive tendering, contracts shall be awarded generally on the basis of the competitiveness of the offers received rather than on the financial contributions made by the participants. However, in the initial phase, the transitional arrangements in Annex III shall apply.

ARTICLE 26

Any potential orders liable to be awarded on the basis of competitive tendering shall be notified by publication via appropriate channels.

ARTICLE 27

The criteria for qualification and selection of bidders and for evaluation of bids shall be defined in precise terms before the bidding process is initiated and published.

ARTICLE 28

Firm or fixed prices shall be sought wherever possible.

ARTICLE 29

When required, OCCAR may request the competent authorities of the Member States to carry out price or cost and quality assurance audits for those contracts which it places in execution of its role as defined in Article 7. Member States shall, in particular, make every effort to harmonise pricing structure methods.

ARTICLE 30

Companies not invited to bid, and companies whose bid was not successful shall, at their request, be given the reasons for their exclusion or for the rejection of their bid.

CHAPTER VII

PROGRAMMES

ARTICLE 31

Where appropriate, existing collaborative programmes between Member States shall be incorporated into OCCAR. The detailed arrangements for such an incorporation, including transitional arrangements, shall be subject to agreement between the Member States concerned and OCCAR, and the act of incorporation shall be subject to the approval of the BoS.

CHAPTER VIII

OWNERSHIP AND DISPOSAL OF PROPERTY

ARTICLE 32

1. All assets acquired by OCCAR under the administrative sub-head of the budget or, after special decision by the BoS, by a Member State on behalf of OCCAR or using joint funding, shall be the property of OCCAR.
2. The allocation of any proceeds derived from the exploitation or sale of assets acquired by OCCAR under the administrative budget of the Organisation, shall be decided by the BoS. In the event of dissolution of OCCAR, the difference between the proceeds derived from the sale of such assets and any liabilities incurred by OCCAR shall be shared or borne by the Member States in accordance with a formula to be established in advance by the BoS.

ARTICLE 33

1. Whenever assets are acquired under the operational sub-head of the budget on behalf of one or several Member States, special financial arrangements shall be agreed by the Member States concerned; and the arrangements shall specify the methods of funding, management, sale and disposal.

2. Assets acquired (material assets) or created (mock-ups, prototypes, tooling, test beds) under the operational budget of OCCAR shall remain the property of the Member States which funded them, but shall be for common use between them.

CHAPTER IX

FINANCIAL ADMINISTRATION

ARTICLE 34

The BoS shall adopt detailed financial rules which shall be the subject of specific regulations in accordance with the following provisions:

- (a) The cost of OCCAR activities, covering both its administrative and operating functions, shall be borne by the Member States.
- (b) All OCCAR funds, namely:
 - those arising from the routine contributions of Member States;
 - those generated by authorised OCCAR activities; and
 - other funds available to OCCAR, or those administered by it on behalf of the Member States;

shall be itemised, by sub-head, in the administrative or operational budget of OCCAR.

- (c) The competent authorities of OCCAR shall operate within the authorisations agreed annually by the BoS.
- (d) The form, frequency and treatment of the Member State contributions shall be set out in appropriate detailed rules and agreements.

ARTICLE 35

1. The funds required for OCCAR programmes and operational plans shall be the subject of an annual budget, prepared in Euros containing:

- an administrative section, covering all expenditure incurred for the internal functioning of OCCAR;
- an operational section containing financial plans in respect of programmes and operations carried out by OCCAR in the pursuit of its objectives.

2. The budget shall specify, section by section, the planned expenditure and the sources of funding.

3. The draft annual budget shall be prepared by the EA and submitted to the BoS for approval in accordance with the OCCAR financial rules and regulations.

ARTICLE 36

The annual accounts shall be submitted to the audit authorities appointed by the BoS. The audit report, accompanied by detailed financial statements using the nomenclature defined in the accounting and financial regulations, shall be submitted to the BoS for approval by the Director at the latest 6 months after the end of the financial year.

CHAPTER X

COOPERATION WITH NON-MEMBER STATES AND INTERNATIONAL ORGANISATIONS

ARTICLE 37

OCCAR may cooperate with other international organisations and institutions, and with the governments, organisations and institutions of non-Member states, and conclude agreements with them.

ARTICLE 38

Such cooperation may take the form of participation by non-Member States or international organisations in one or more programmes. Such arrangements may make provision for matters associated exclusively with the programme in which a non-Member State or international organisation is participating to be the subject of decisions taken by the BoS with the agreement of the said non-Member State or organisation concerned.

CHAPTER XI

LEGAL STATUS, PRIVILEGES AND IMMUNITIES

ARTICLE 39

OCCAR shall have full legal personality and, in particular, the capacity to:

- (a) contract;
- (b) acquire and dispose of immovable and movable property, and
- (c) institute legal proceedings.

ARTICLE 40

1. OCCAR, its staff and experts, as well as the representatives of its Member States, shall enjoy the privileges and immunities set out in Annex I.
2. Agreements concerning the headquarters of OCCAR, its programme divisions and its facilities set up in accordance with the provisions of this Convention, shall be concluded between OCCAR and the Member states on whose territories the headquarters, its programme divisions and its facilities are situated.

ARTICLE 41

1. The powers defined in Articles 39 and 40 shall be exercised by the BoS, which may delegate them to the Director. When the BoS has not delegated a power to the Director, that shall not prevent the BoS authorising the Director, or any staff members designated by the BoS, to sign a contract or adopt or sign an international agreement.
2. Programme contracts shall be negotiated and concluded by OCCAR in accordance with the detailed contractual procedures and regulations referred to in articles 23 and 24 of this Convention, the law of the contract being then determined by the parties.

CHAPTER XII

SECURITY

ARTICLE 42

The BoS shall adopt security regulations. The regulations shall avoid any unnecessary restrictions on the movement of staff, information and material, in particular concerning the release of information to third parties and the involvement of the security authorities in visiting procedures.

CHAPTER XIII

REPORTS AND AUDITS

ARTICLE 43

Each year, the Director shall submit to the BoS a report on activities performed in the preceding year and a forecast of activities for the coming year.

ARTICLE 44

To enable them to discharge their audit functions as regards their national administrations, and to report to their parliaments as provided in their statutes, national auditors may obtain all information and examine all documents held by the EA which relate to the programmes in which their Member States are participating, and to the operation of the Central Office.

ARTICLE 45

The national auditors shall, except in exceptional circumstances, consult together and with the Director of the EA, before exercising their rights of access to the EA with the objectives of avoiding the unnecessary interruption of activities within OCCAR and protecting information relating to other Member States.

ARTICLE 46

Member States shall coordinate their actions aimed at protecting the financial interests of OCCAR against fraud. To this end, with the aid of the EA, they shall organise regular collaboration between the competent services within their administrations.

ARTICLE 47

The BoS may order any inspection or audit of OCCAR which it considers necessary to improve the functioning of the Organisation and the conduct of programmes.

CHAPTER XIV

SETTLEMENT OF DISPUTES

ARTICLE 48

1. Any dispute between the Member States, concerning the interpretation or application of this Convention should, if possible, be settled by consultation.
2. If a dispute cannot be settled by consultation, at the request of any party to the dispute, it shall be submitted to arbitration under the conditions laid down in Annex II.

ARTICLE 49

1. Any disputes arising from contracts concluded by OCCAR for the implementation of the programmes which have been assigned to it may be submitted, by agreement, to a conciliation committee within the BoS, which shall devise appropriate procedures.
2. Each contract to be concluded by OCCAR for the implementation of programmes assigned to it, other than employment contracts, should provide for conciliation and include an arbitration clause.
3. Any dispute between OCCAR and a member of its staff concerning an employment contract or working conditions shall be settled in accordance with the staff rules and regulations.

ARTICLE 50

If it is claimed by a third party that damage or injury has been caused by OCCAR, its staff members or experts, and OCCAR does not waive immunity, the BoS shall take all appropriate steps to deal with the claim and, if the claim is justified, to settle it.

CHAPTER XV

FINAL PROVISIONS

ARTICLE 51

1. The BoS may recommend to Member States amendments to this Convention and to its Annexes. Any Member State that wishes to propose an amendment shall notify

the Director of EA thereof. The Director shall inform the Member States of any amendment proposal so notified at least three months before it is discussed by the BoS.

2. Any amendment recommended by the BoS shall enter into force thirty days after the depositary has received notification of acceptance from all Member States. The depositary shall notify all Member States of the date of entry into force of any amendment.

ARTICLE 52

This Convention, including the Annexes to it and which form an integral part of it, shall be subject to ratification by the four founding States and shall enter into force 30 days after deposit of the fourth instrument of ratification or acceptance.

ARTICLE 53

Once this Convention has entered into force, a European State which wishes to become a Member State may be invited by the BoS to accede to this Convention. This Convention shall enter into force for such a new Member State 30 days after the deposit of its instrument of accession.

ARTICLE 54

The Government of the French Republic shall be the depositary of this Convention.

ARTICLE 55

1. If the Member States decide to dissolve OCCAR, they shall discuss with OCCAR and agree amongst themselves the provisions required to satisfactorily manage the consequences of the dissolution, notably in respect of third parties and contractual partners of OCCAR. The agreement shall also cover, whenever it is necessary, the conditions under which the rights and responsibilities of OCCAR shall be transferred to Member States following dissolution.

2. The dissolution of OCCAR shall be effective once the arrangements decided between the Member States referred to above have come into force.

ARTICLE 56

1. If one of the Member States wishes to withdraw from the Convention, it shall examine the consequences of such withdrawal with the other Member States. If on completion of these consultations the Member State concerned still wishes to withdraw, it shall notify its withdrawal in writing to the depositary who shall forward this notification to the other Member States and to the Director. The withdrawal shall take effect six months following the date the notification was received by the depositary.
2. The withdrawing Member State shall fulfil all its commitments up to the effective date of withdrawal. The commitments shall be assessed by the Member States.
3. The rights and responsibilities of the withdrawing Member State concerning security, the settlement of damages, the resolution of disputes and other outstanding commitments shall remain in force after its withdrawal.

ARTICLE 57

Any Member State which fails to fulfil its obligations under this Convention shall cease to be a member of OCCAR on a unanimous decision by the BoS. The Member State concerned shall not participate in the vote.

ARTICLE 58

This Convention shall be deposited in the archives of the Government of the French Republic which shall forward certified copies to the Governments of signatory and acceding States.

In witness whereof, the undersigned Representatives, having been duly authorised, have signed this Convention.

Done at Farnborough on 9 September 1998, in a single original, in the English, French, German and Italian languages, each text being equally authentic.

PRIVILEGES AND IMMUNITIES

ARTICLE 1

Without prejudice to Articles 3 and 4 of this Annex, the buildings and premises of OCCAR shall be inviolable.

ARTICLE 2

The archives of OCCAR shall be inviolable.

ARTICLE 3

1. OCCAR shall have immunity from jurisdiction and execution, except:
 - (a) to the extent that it shall, by decision of the BoS, have expressly waived such immunity in a particular case; the BoS has the duty to waive this immunity in all cases where reliance upon it would impede the course of justice and it can be waived without prejudicing the interests of OCCAR;
 - (b) in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to, or operated on behalf of, OCCAR, or in respect of a motor traffic offence involving such a vehicle;
 - (c) in respect of the enforcement of an arbitration award made under the terms of any contract made by OCCAR;
 - (d) in the event of the attachment, pursuant to a decision by the judicial authorities, of the salaries and emoluments owed by OCCAR to a staff member.
2. OCCAR's property and assets, wherever situated, shall be immune from any form of requisition, confiscation, expropriation or sequestration. They shall also be immune from any form of administrative or provisional judicial constraint, except insofar as may be temporarily necessary in connection with the prevention and investigation of accidents involving motor vehicles belonging to, or operated on behalf of, OCCAR.

ARTICLE 4

1. Within the scope of its official activities, OCCAR, its property and income shall be exempt from direct taxes.
2. When purchases of goods or services of substantial value and strictly necessary for the exercise of the official activities of OCCAR are made or used by OCCAR, and when the price of such goods or services includes taxes or duties, appropriate measures shall, wherever possible, be taken by the Member States to grant exemption from such taxes or duties or to provide for their reimbursement.

ARTICLE 5

Goods imported or exported by OCCAR or on its behalf, and strictly necessary for the exercise of its official activities, shall be exempt from all import or export duties, and from all import or export prohibitions and restrictions.

ARTICLE 6

1. For the purpose of Articles 4 and 5 of this Annex, the official activities of OCCAR shall include its administrative activities, including its operations in connection with the Social Security Scheme.
2. The provisions of Articles 4 and 5 shall not apply to taxes and duties that are no more than charges for public utility services.

ARTICLE 7

No exemption shall be granted under Articles 4 and 5 in respect of goods purchased or imported, or services provided, for the personal benefit of the staff members of OCCAR.

ARTICLE 8

1. Goods acquired under Article 4 or imported under Article 5 shall not be sold or given away except in accordance with conditions laid down by the Member States which have granted exemptions.
2. The transfer of goods and services between the Headquarters Office and other OCCAR facilities, or between its various divisions, or for the purpose of implementing a programme of OCCAR, between them and a national institution of a Member State,

shall be free of charges or restrictions of any kind ; if necessary, the Member States shall take all appropriate measures to grant exemption from or reimbursement of such charges or to lift such restrictions.

ARTICLE 9

The circulation of publications and other information material sent by or to OCCAR shall not be restricted in any way.

ARTICLE 10

OCCAR may receive and hold all kind of funds, currency, cash, or securities; it may dispose of them freely for any purpose provided for in the Convention and hold accounts in any currency to the extent required to meet its obligations.

ARTICLE 11

1. For its official communications and the transfer of all its documents, OCCAR shall enjoy treatment not less favourable than that accorded by each of the Member States to other international organisations.
2. No censorship shall be applied to official communications of OCCAR by whatever means of communication.

ARTICLE 12

Member States shall take all appropriate measures to facilitate the entry into, stay in, or departure from their territories of staff members of OCCAR.

ARTICLE 13

1. Representatives of Member States shall, while exercising their functions and in the course of their journeys to and from the place of meeting, enjoy the following privileges and immunities:
 - (a) immunity from arrest and detention, and from the seizure of their personal luggage;
 - (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words spoken and written, done by them in the

exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a representative of a Member State, nor in the case of damage caused by a motor vehicle belonging to or driven by him/her;

- (c) inviolability for all their official papers and documents;
- (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
- (e) exemption for themselves, their spouses and dependant children and from all measures restricting entry and from aliens' registration formalities;
- (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign governments on temporary official missions;
- (g) the same customs facilities as regards their personal luggage as are accorded to diplomatic agents.

2. Privileges and immunities are accorded to representatives of Member States, not for their personal advantage, but in order to ensure complete independence in the exercise of their functions in connection with OCCAR. Consequently, a Member State has the duty to waive the immunity of a representative wherever retaining it would impede the course of justice and it can be waived without prejudicing the purposes for which it was accorded.

ARTICLE 14

In addition to the privileges and immunities provided for in Article 15, the Director and, when the office is vacant, the person appointed to act in his/her place, shall enjoy the privileges and immunities to which diplomatic agents of comparable rank are entitled.

ARTICLE 15

The staff members of OCCAR:

- (a) shall have, even after they have left the service of OCCAR, immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a motor traffic offence committed by a staff

member of OCCAR, nor in the case of damage caused by a vehicle belonging to or driven by him/her;

- (b) shall be exempt from all obligations in respect of military service;
- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing alien's registration as are normally accorded to staff members of international organisations; and members of their families forming part of their households shall enjoy the same facilities;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to staff members of international organisations;
- (f) shall, in time of international crisis, enjoy the same facilities as to repatriation as diplomatic agents; and the members of their families forming part of their households shall enjoy the same facilities;
- (g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the Member State concerned, and the right on termination of their functions in that Member State to export free of duty their furniture and personal effects, subject, in both cases, to the conditions considered necessary by the Member State on whose territory the right is exercised.

ARTICLE 16

Experts other than the staff members referred to in Article 15, in the exercise of their functions in connection with OCCAR or in carrying out missions for OCCAR, shall enjoy the following privileges and immunities, to the extent that these are necessary for the exercise of their functions, including during journeys made in the exercise of their functions and in the course of such missions:

- (a) immunity from jurisdiction in respect of acts, including words written and spoken, done by them in the exercise of their functions, except in the case of a motor traffic offence committed by an expert, or in the case of damage caused by a motor vehicle belonging to him or driven by him; experts shall continue to enjoy this immunity after they have ceased to be employed by OCCAR;
- (b) inviolability for all official papers and documents;

- (c) the same facilities as regards monetary and exchange regulations and as regards their personal luggage as are accorded to the officials of foreign governments on temporary official missions.

ARTICLE 17

1. Subject to the conditions and following to the procedures laid down by the BoS, the Director and OCCAR staff members shall be subject to a tax, for the benefit of OCCAR, on salaries and emoluments paid by OCCAR. Such salaries and emoluments of the Director and OCCAR staff members shall be exempt from national income tax; but the Member States shall retain the right to take these salaries and emoluments into account for the purpose of assessing the amount of taxation to be applied to income from other sources.
2. The provisions of paragraph 1 shall not apply to annuities and pensions paid by OCCAR to its former Directors and staff members.

ARTICLE 18

Articles 15 and 17 of this Annex shall apply to all categories of staff members to which the Staff Regulations of OCCAR apply. Subject to Article 22(1), the BoS shall decide the categories of experts to which Article 16 shall apply. The names, titles and addresses of the staff members experts referred to in the present article shall be communicated from time to time to the Member States.

ARTICLE 19

In the event that it establishes its own social security scheme, OCCAR, the Director and OCCAR staff members shall be exempt from all compulsory contributions to national social security bodies, subject to agreements concluded with the Member States in accordance with Article 24 of this Annex.

ARTICLE 20

1. The privileges and immunities provided for in this Annex are not granted to the Director, staff members and experts of OCCAR for their personal advantage. They are provided solely to ensure, in all circumstances, the unimpeded functioning of OCCAR and the complete independence of the persons to whom they are accorded.
2. The Director has the duty to waive any relevant immunity in all cases wherever retaining it would impede the course of justice and it can be waived without

prejudicing the interests of OCCAR. In the case of the Director, the BoS is competent to waive such immunity.

ARTICLE 21

1. OCCAR shall cooperate at all times with the competent authorities of the Member States in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning the handling of explosives and inflammable material, public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Annex.

2. The procedure for the cooperation referred to in paragraph 1 may be laid down in the complementary agreements referred to in Article 24.

ARTICLE 22

Each Member State shall retain the right to take all appropriate precautionary measures in the interests of its security.

ARTICLE 23

No Member State shall be obliged to accord the privileges and immunities referred in Articles 13, 14, 15 (b), (e) and (g) and 16 (c) to its own nationals or persons who, at the moment of taking up their duties in that Member State, are permanent residents thereof.

ARTICLE 24

OCCAR may, on a decision of the BoS, conclude with one or more Member States complementary agreements to give effect to the provisions of this Annex as regards such State or States, and other arrangements to ensure the efficient functioning of the Agency and the safeguarding of its interests.

ARTICLE 25

OCCAR shall have insurance cover against third party risks in respect of vehicles owned or operated by it, as required by the laws and regulations of the Member State in which the vehicle is operated. OCCAR shall require as a condition of their employment that staff members have insurance cover against third party risks in

respect of vehicles owned or operated by them, as required by the laws and regulations of the Member State in which the vehicle is operated.

ANNEX II

ARBITRATION

ARTICLE 1

The request for arbitration shall be made to the depositary, stating the nature of the dispute. The depositary shall communicate this information to all Member States.

ARTICLE 2

1. The Arbitral Tribunal shall be composed of three members:
 - (a) an arbitrator designated by each Party to the dispute;
 - (b) a third arbitrator, designated by mutual agreement by the first two, who shall act as chairman of the Tribunal;
 - (c) If the chairperson of the tribunal is not designated within thirty days from the date of designation of the second arbitrator, a Party to the dispute may request the President of the International Court of Justice to select as soon as possible the chairperson. S/he may not choose a chairperson who has been or is currently of the same nationality as one of the Parties to the dispute, unless the other Party so agrees.
2. In the case of the death, incapacity or default of an arbitrator, the Party to the dispute which designated him/her shall designate his/her replacement within thirty days from the date of death, incapacity or default. In the case of death, incapacity or default of the chairman, his/her replacement shall be designated under the conditions laid down in paragraph 1(c) within ninety days of the death, incapacity or default.

ARTICLE 3

The Tribunal may investigate and rule on counter-claims directly linked to the subject of the dispute.

ARTICLE 4

The Tribunal may, at the request of one of the Parties to the dispute, recommend protective measures.

ARTICLE 5

Each Party to the dispute shall be responsible for costs incurred in the preparation of its own case. The cost of the salaries of the members of the Tribunal, and all expenses incurred by the Tribunal, shall be shared equally between the Parties to the dispute. The Tribunal shall record all expenditure and shall provide a final account to the Parties.

ARTICLE 6

Any Party whose interests are likely to be affected by the decision may, after notifying in writing the Parties to the dispute, intervene in the arbitration procedure, with the agreement of the Tribunal and at its own cost. Any Party thus intervening may submit proof or dossiers, or make oral statements of its arguments, concerning the questions that have given rise to the intervention, in accordance with the procedures established in application of Article 7 of this Annex, but it shall have no rights in respect of the composition of the Tribunal.

ARTICLE 7

The Tribunal shall establish its own rules of procedure.

ARTICLE 8

1. The decisions of the Tribunal, both in respect of its procedure and the location of its meetings, and its award shall be taken by majority vote of its members.
2. The Parties to the dispute shall facilitate the work of the Tribunal; to this end, the Parties shall:
 - (a) provide the Tribunal with all relevant documents and information; and
 - (b) allow the Tribunal to visit their territory, to examine witnesses or specialists and to travel to locations to investigate the said dispute in situ.

3. The fact that a Party to the dispute does not comply to the provisions of paragraph 2, or does not defend its case, shall not prevent the Tribunal from giving a ruling or making an award.

ARTICLE 9

The Tribunal shall give its ruling within six months of the date of its formation, unless it considers it necessary to extend this time limit for a new period, that shall not exceed five months. The award by the Tribunal shall be reasoned. It is final and without appeal and shall be communicated to the depositary who shall so inform the Parties. The Parties to the dispute shall implement it without delay.

ANNEX III

TRANSITIONAL ARRANGEMENTS

1. Contracts shall, in principle, be awarded more on the basis of competitiveness rather than on the financial contributions made by each of the Member States.

However, in accordance to Article 5 of the present Convention, during the three years following entry into force of this Convention :

- (a) if the industry of a Member State has received a volume of orders smaller than 66% of its financial contribution, either concerning a programme, a certain phase or a certain sub-assembly of a programme (as far as the complexity of a weapon system justifies that this system is divided beforehand into sub-assemblies),
- (b) if a global imbalance of more than 4% is identified in relation to all programmes,

appropriate actions will be taken by the BoS in order to restore the balance.

2. The efficiency of this procedure, and in particular the percentage rates quoted above shall first be reviewed a year after entry into force and subsequently at regular intervals.

3. After the three-year period, there must be an examination of whether this procedure can be repealed.

4. BoS shall adopt detailed arrangements to implement the above provisions.

DECISION-MAKING PROCESS

1. The following decisions taken by all the Member States will be adopted
 - (a) by a reinforced qualified majority
 - (i) admission of new Member States
 - (ii) rules and regulations of OCCAR
 - (iii) organisation of OCCAR-EA
 - (iv) appointment of the director

A reinforced qualified majority means that a decision cannot be taken if there are ten voting rights in opposition.

- (b) by a majority of the voting rights
 - (i) establishing or dissolving of committees
2. The decision-making process within a programme shall be set out in a specific programme agreement, with due reference to the guidelines established by the BoS.
3. Weighting for the decisions listed in paragraph 1:
 - (a) The initial number of voting rights of each founding Member State is equal to 10.
 - (b) Any new Member State in OCCAR will have an appropriate number of voting rights as decided by the existing Member States.
4. When this Convention makes no provision for how a decision shall be taken, or there is a dispute whether there is a provision or as to which provision applies, the decision shall be taken by unanimity.
5. After an initial period of three years, the decision-making process may be re-examined to take account of all relevant factors.
6. This Annex may be revised by unanimous decision of the BoS made at ministerial level.

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