APPENDIX II

NOTE

on privileges and immunities of the Supervisory Authority and the Registrar

(presented by Canada and the United Kingdom)

It is the view of the Public International Law Working Group that the privileges and immunities given to the Supervisory Authority and the Registrar in the text of the convention should be only such as are functionally necessary.

Discussions of the extent of immunity that is functionally required must therefore reflect the functions conferred on the Supervisory Authority and the Registrar respectively.

Article 16(2)(d) of the Convention currently confers on the Supervisory Authority the functions of giving direction to the Registrar to rectify acts or omissions which are in contravention of the Convention, the Protocol or the regulations.

We consider that this function goes beyond "supervision" – which should relate to the overall operation of the registry – to confer a function in respect of dispute resolution.

For example, in so far as any acts or omissions affect the validity or priority of any interests then rectification or correction of the register should be a matter for the courts having jurisdiction, if the Registrar does not act (or cannot act) voluntarily. Were such a function to remain with the Supervisory Authority then the granting of immunity to the Supervisory Authority in respect of the determination of the rights of holders of international interests would be unacceptable. If the power to give such directions were deleted, this would enable the Supervisory Authority to be given comprehensive functional immunity.

So far as the Registrar is concerned, we consider the immunity should be limited. The existing provisions in article 26 bis for liability for damages must require the Registrar to be amenable to the Courts in that respect and liable to legal processes (including those seeking the production of documents) in order that the liability of the Registrar to pay damages may be determined. This conclusion is based on the assumption that the registry is of a very simple notice-based type.