Legal aspects of establishing the IMS system

One of the key tasks of the CTBTO Preparatory Commission is the establishment of a global verification regime to verify compliance with the prohibition of nuclear test explosions. Since the Comprehensive Nuclear-Test-Ban Treaty (CTBT) has not yet entered into force, one may well ask what the legal basis is for establishing and provisionally operating this regime.

Article IV(1) of the CTBT stipulates that the verification regime of the Treaty, which includes the International Monitoring System (IMS), must be capable of meeting the verification requirements of the Treaty at its entry into force. The task of ensuring that this requirement is met has been entrusted to the CTBTO Preparatory Commission in accordance with the Text establishing the Commission, which was adopted by the signatories to the Treaty on 19 November 1996. Paragraph 13 of the Text provides that the Commission “shall undertake all necessary preparations to ensure the operationalization of the Treaty’s verification regime at entry into force”.

In terms of paragraph 14, the Commission also supervises and coordinates the development, testing and provisional operation of the IMS.

Responsibility for IMS facilities is shared between the Provisional Technical Secretariat (PTS) and the States hosting the facilities. In accordance with Article IV(16) of the CTBT, the IMS is placed under the authority of the Technical Secretariat, while all monitoring facilities are “owned and operated by the states hosting or otherwise taking responsibility for them”. In view of this dual responsibility, paragraph 4 of Part I of the Protocol foresees that there will be appropriate agreements or arrangements between the organization and the

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1The most recent IMS facility agreement was concluded between the Commission and Oman on 19 May 2004.
host States. The task of concluding these ‘facility agreements’ has been assigned to the Commission under paragraph 12 of its establishing Text. In 1997 the Commission approved model agreements and authorized the PTS to negotiate agreements based on the models.

Besides dealing with the establishment, upgrading and provisional operation and maintenance of monitoring stations and laboratories, facility agreements also provide for functional privileges and immunities of the Commission. To date, the Commission has concluded 29 such agreements, of which 22 have entered into force and one is being applied provisionally pending its entry into force. Most recently, the Facility Agreement between the Commission and the Government of the Sultanate of Oman was concluded on 19 May 2004. Once they enter into force definitively, the Commission publishes facility agreements and files and records them with the United Nations.

An interim exchange of letters between the Commission and the host State usually regulates the activities of the Commission pending the entry into force of the formal facility agreement. Facility agreements nevertheless remain essential to place the provisional operation and maintenance of the IMS on a secure legal foundation. By April 2004, appropriate legal arrangements in the form of facility agreements or interim exchanges of letters were in place for a total of 322 (of the 337) IMS facilities in 81 (of the 89) host countries.

In conclusion, the ongoing work of the CTBTO Preparatory Commission to establish the IMS has resulted in many of the provisions of the CTBT being implemented in practice even before the Treaty has entered into force.

List of concluded facility agreements

<table>
<thead>
<tr>
<th>No.</th>
<th>Country Name</th>
<th>Date of Signature(s)</th>
<th>Entry into Force</th>
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<tbody>
<tr>
<td>2</td>
<td>New Zealand</td>
<td>13 November 1998</td>
<td>19 December 2000</td>
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<tr>
<td>3</td>
<td>South Africa</td>
<td>20 May 1999</td>
<td>20 May 1999</td>
</tr>
<tr>
<td>6</td>
<td>Jordan</td>
<td>11 November 1999</td>
<td>11 November 1999</td>
</tr>
<tr>
<td>7</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>12 November 1999</td>
<td>16 June 2004</td>
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<tr>
<td>8</td>
<td>Argentina</td>
<td>9 December 1999</td>
<td>2 March 2004</td>
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<td>Australia</td>
<td>13 March 2000</td>
<td>17 August 2000</td>
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<td>10</td>
<td>Cook Islands</td>
<td>31 March 2000 (PTS)</td>
<td>14 April 2000 (Cook Islands)</td>
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<td>Finland</td>
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<td>6 June 2000</td>
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<td>25 May 2001</td>
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<td>13</td>
<td>Sri Lanka</td>
<td>14 June 2000</td>
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<tr>
<td>14</td>
<td>Spain</td>
<td>14 Sept. 2000</td>
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<td>16</td>
<td>Peru</td>
<td>14 March 2001</td>
<td>8 July 2002</td>
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<tr>
<td>17</td>
<td>Senegal</td>
<td>22 May 2001</td>
<td>22 May 2001 (Provisionally applied)</td>
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<td>18</td>
<td>France</td>
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<td>16 April 2002 (Palau)</td>
<td>29 April 2002 (PTS)</td>
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<td>Norway</td>
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</tr>
<tr>
<td>29</td>
<td>Oman</td>
<td>19 May 2004</td>
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