



Meeting of States Parties

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Report of the External Auditors for the financial year 2002, with financial statements of the International Tribunal for the Law of the Sea as of 31 December 2002¹

Introductory note

1. The ninth Meeting of States Parties, as recorded in the report of the ninth Meeting (SPLOS/48, para. 28), requested the Registrar, pending the entry into force of the Financial Regulations of the Tribunal, to present to the Meeting of States Parties every year a preliminary performance report on the use of the budget appropriations for the preceding year and a final performance report on the use of the budget appropriations for the year prior to the preceding year.
2. Consistent with that decision, the report of the External Auditor for 2002, the year prior to the preceding financial year, is hereby presented.
3. The preliminary performance report of the preceding year (2003) is contained in annex I to the draft budget proposals of the Tribunal for 2005-2006 (SPLOS/2004/WP.1).

¹ The submission of the present document was delayed due to the late receipt of the other document required for reference purposes.

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A. Scope of the Examination

1. We have audited the accompanying financial statements of the

**International Tribunal for the Law of the Sea,
Hamburg**

(hereinafter also referred to as "the Tribunal" or "ITLOS")

including the statement of assets, liabilities, working capital fund and excess of income over expenditures as of December 31, 2002 (Exhibit II), the statement of income and expenditures for the period from 1 January until 31 December 2002 (Exhibit I) and the Notes to the financial statements for the period 1 January until 31 December 2002 (Exhibit III). Within the audit scope we have additionally audited certain aspects of operating procedures as directed by the President of the International Tribunal for the Law of the Sea as set out in his letter of 17 April 2003 for the year 2002. The financial statements are the responsibility of the Registry of the Tribunal. Our responsibility is to express an opinion on these financial statements and the following aspects of the operational procedures of the Tribunal:

1. whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rule of the Tribunal and the Financial Regulations of the United Nations;
 2. whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided in the Rules of the Tribunal or the Financial Regulations of the United Nations;
 3. whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and
 4. whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.
2. The financial statements as of December 31, 2002, and our audit thereon cover the period from 1 January to 31 December 2002.

3. The International Tribunal for the Law of the Sea applied generally accepted accounting principles and the Financial Regulations and Rules of the United Nations which are applied *mutatis mutandis*.
4. We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis of our opinion.
5. Reference is made to the General Terms for "Wirtschaftsprüfer und Wirtschaftsprüfungsgesellschaften" dated January 1, 2002 and our Special Conditions dated 1 January 2001 (Exhibit VII), in regard to the assignment and our responsibilities, including those to third parties.

B. Budget

6. The Meeting of State Parties, at its 11th Meeting, by its decision on 17 May 2001 approved and appropriated the amount of USD 7,807,500 for the International Tribunal for the Law of the Sea for the period from January, 1 to December 31, 2002, as set out in document SPLOS/70. With a view to providing the Tribunal with the necessary financial means to consider cases in 2002, in particular those requiring expeditious proceedings, the Meeting approves also an amount of USD 894,300 in 2002 as contingency funds of the Tribunal, which shall only be used in the event of cases submitted to the Tribunal. The Meeting also approves an amount of USD 50,000 to be appropriated to the Working Capital Fund in 2002, in order to build up the Working Capital Fund to the recommended level of USD 650,000.
7. The Meeting of State Parties, at its 12th Meeting, by its decision on 25 April 2002, decided that the Tribunal should surrender the savings from the budgets of the Tribunal for 1998, 1999 and 2000. A deduction of the amount of such savings should then be made from the assessed contributions of States Parties for 2003.

The Meeting of States Parties authorized the Tribunal to transfer funds between appropriation sections when it is necessary to deal with cases, which may arise during the budget period 2003. In addition, the 12th meeting on an exceptional basis approved an amount of USD 500,000, being part of savings from the financial period 2001, to be appropriated to the Working Capital Fund of the Tribunal, in order to provide the Tribunal with the necessary financial means, in the event of temporary shortfalls in funds, to consider cases to the extent that the expenditures cannot be met from the Contingency, or from the transfers of funds between appropriation sections.

8. The statement of income and expenditure for the period from 1 January until 31 December 2002 shows an excess of income over expenditure of USD 958,424.
9. Budget estimates are based on the number of cases, whereby only one of the two anticipated cases emerged during the year. In addition, with respect to the Case dealt with by the Tribunal in December 2002, a shorter meeting time for the Judges of the International Tribunal for the Law of the Sea in Hamburg than provided for in the budget resulted in savings in the budget lines.

This explained savings in the areas Contingency Provision (this is a provision made for Tribunal cases, which they might receive during the year), Overtime and Communications

10. Savings in Judges remuneration resulted from a vacancy in the Tribunal at the March session and in addition the contingency pension provision was not fully utilized as five judges were re-elected.
11. Equipment purchased during the year was lower than anticipated due to a scale down of original purchases planned. At the same time the Rental and Maintenance of Equipment was reduced, as expired lease contracts were not renewed as additional equipment was purchased rather than leased.
12. Over-expenditure in the budget line common staff costs is a result of relocation expenses associated with the arrival and departure of staff members. The initial budgetary estimates in the Maintenance of Premises proved to be insufficient and higher costs than anticipated occurred as warranties and initial service contracts provided by the host country came to an end.

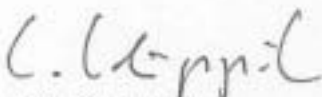
C. Audit Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects the financial position of the International Tribunal for the Law of the Sea, Hamburg, as of December 31, 2002, in conformity with generally accepted accounting principals and with the Financial Regulations of the United Nations which were applied *mutatis mutandis*. The operational procedures of the International Tribunal for the Law of the Sea as detailed in Exhibit VI were in accordance with the Rules and Staff Rules of the International Tribunal for the Law of the Sea and the Financial Regulations and Staff Rules of the United Nations applied *mutatis mutandis*.

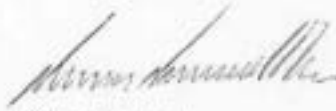
Hamburg, May 16, 2003

PRICEWATERHOUSECOOPERS

GmbH
Wirtschaftsprüfungsgesellschaft



(W. Schöppich)
Wirtschaftsprüfer



(K.V. Rother)
Wirtschaftsprüfer

International Tribunal for the Law of the Sea

Statement of Income and Expenditures for the period from

1 January until 31 December 2002

(Statement 1)

	2002	2001
	USD	USD
Assessed contributions	7,807,500	8,090,900
Other Income		
Interest income (net)	67,057	146,693
Savings on cancellation of prior period obligations	101,066	186,213
Gains/losses (-) on exchange	-88,146	32,133
Miscellaneous Income/expense	86,976	0
Total income	7,974,453	8,455,939
Expenditure		
Total expenditure and obligations (Exhibit V)	-7,016,029	-6,972,670
Provision for Working Capital Fund Reserve	0	-150,000
Excess of income over expenditure (2001 after provision for the Working Capital Fund Reserve)	958,424	1,333,269

International Tribunal for the Law of the Sea

Statement of Assets, Liabilities, Working Capital Fund and Excess of Income over Expenditures as at 31 December 2002 (Statement 2)

	2002 USD	2001 USD
ASSETS		
Cash and term deposits	7,573,989	6,849,011
Accounts receivable		
Contributions receivable from States Parties	1,621,500	1,314,164
Tax reimbursement due	155,944	176,302
Accounts receivable - Others	182,732	72,899
TOTAL ASSETS	9,534,165	8,412,376
LIABILITIES		
Contributions received in advance for 2003	625,569	1,186,339
Surrender of savings prior years to States Parties in 2003	2,633,220	0
Obligations - current period	973,410	694,346
Unliquidated obligations - prior periods	0	72,936
Fund account	0	8,784
Korea fund	3,408	3,408
Assessment special account	2,356,865	1,830,074
TOTAL LIABILITIES	6,592,472	3,795,887
Working Capital Fund	1,150,000	650,000
Prior period Gains-Reserve	833,269	2,633,220
Excess of income over expenditure (2001 after provision for the Working Capital Fund Reserve)	958,424	1,333,269
TOTAL RESERVES AND FUND BALANCES	2,941,693	4,616,489
TOTAL LIABILITIES, RESERVES AND FUND BALANCES	9,534,165	8,412,376

International Tribunal for the Law of the Sea

Notes to the Financial Statement for the period 1 January until 31 December 2002

Note 1: Statement of the objectives and activities of the Tribunal

1. The International Tribunal for the Law of the Sea (ITLOS) is an independent international judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention. It began its activities in 1996. The Tribunal is open to States Parties to the Convention and, in certain cases, to entities other than State Parties (such as international organizations and natural or legal persons). The jurisdiction of the Tribunal comprises all disputes submitted to it in accordance with the Convention. It also extends to all matters specifically provided for in any other agreement, which confers jurisdiction on the Tribunal. The Tribunal is composed of 21 independent members elected by secret ballot by the States Parties to the Convention.

Note 2: Summary of significant accounting policies

2. The Fourth Meeting of the States Parties to the United Nations Convention of the Law of the Sea decided that pending the adoption of the Tribunal's Financial Regulations, the Financial Regulations of the United Nations will apply *mutatis mutandis* to the Tribunal. The Tribunal's accounts are therefore currently maintained in accordance with the Financial Regulations and Rules of the United Nations with such modifications as required by the nature and scope of work of the Tribunal.
3. The form of presentation of the accounts, comprising two statements and one Annex (Exhibit V) for the Financial Period ending 31 December 2002, is in line with the formats proposed for use by the agencies of the United Nations system.

Accounting Period

4. The current accounting period being reported on is from 1 January to 31 December 2002.

Currency of accounts

5. The accounting unit is the United States Dollar. The United Nations operational rates of exchange form the basis for establishing the equivalent in United States Dollars of other currencies.

Translation of currencies

6. Differences between the valuation of the currencies when entered into the accounts and when actual transactions are completed are calculated and detailed in these notes as gains and losses on exchange transactions.
7. Periodically, assets and liabilities in currencies other than United States Dollars are revalued for accounting purposes at the prevailing United Nations operational rates of exchange. Any variance due to fluctuation of those rates is accounted for as income or loss in the statement of income and expenditure.

Income

8. Income consists of assessed contributions from the States Parties. All other income received by the Tribunal is classified as miscellaneous income and is included as general resources. - (See note 4)

Expenditure

9. All expenditure of the Tribunal is recorded against allocated lines of budgetary appropriation.
10. Expenditures of the Tribunal are accounted for on an accrual basis, except for those relating to staff entitlements, which are accounted for on the basis of cash disbursements. No provision is made for staff entitlements due to repatriation, accumulated annual leave and compensatory time liability. Reference is made to Note 3: on Contingent liability.

Assets

11. All funds received are deposited into Tribunal's bank accounts, including those under special account arrangements (see Note 6), and reflected as cash holdings. Non-expendable equipment (especially computer hardware and software) is not included in the assets but is charged against the current appropriations when acquired.

Liabilities

12. The liabilities of the Tribunal include contributions received in advance from States Parties for the budget period 2003 of USD 625,569, liquidated and unliquidated obligations of USD 241,243 and USD 732,167 (total USD 973,410), special accounts maintained for staff assessment withholdings of USD 2,356,865 and the surrender of savings to States Parties of USD 2,633,220.
13. A special account (Assessment special account) has been maintained for staff assessment withholdings from the gross remuneration of staff in accordance with the applicable scale of the United Nations.
14. The Meeting of States Parties at its 12th meeting on 25 April 2002 decided that the Tribunal will return savings from the 1998, 1999 and 2000 budgets of the Tribunal, which were not credited to the working Capital Fund, to the States Parties. A new account entitled "Surrender of savings prior years to States Parties in 2003" was therefore created to which these savings have been reclassified from the prior period gains reserve accordingly.

Reserves

15. Reserves include funds credited to the Working Capital Fund in the full amount authorized by the Meeting of States Parties as follows:

1999 savings	USD	200,000
2000 appropriations	USD	50,000
2000 savings	USD	200,000
2001 appropriations	USD	50,000
2001 savings	USD	<u>150,000</u>
	USD	<u><u>650,000</u></u>

16. Hence the Working Capital Fund has been built up to the level envisaged in the decision of the Eleventh Meeting of States Parties (SPLOS/70 paragraph 3). An additional amount of USD 50,000 approved by the Meeting of States Parties to be appropriated to the Working Capital in the 2002 budget of the Tribunal (SPLOS/70 paragraph 3) was therefore not utilized for the purpose and will be returned to the State Parties as part of the savings from the 2002 budget period (see Exhibit V).

17. The twelfth Meeting of States Parties (SPLOS/89 paragraph 2) on an exceptional basis approved an amount of USD 500,000, being part of savings from the financial period 2001, to be appropriated to the Working Capital Fund of the Tribunal, in order to provide the Tribunal with the necessary financial means, in the event of temporary shortfalls in funds, to consider cases to the extent that the expenditure cannot be met from the Contingency, or from the transfer of funds between appropriation sections.
18. As a consequence of the approved transfer of savings and appropriations in previous years the Working Capital Fund currently stands at USD 1,150,000.

2001 Working Capital Fund	USD	650,000
2001 Additional savings	USD	<u>500,000</u>
TOTAL	USD	<u>1.150.000</u>

Note 3: Contingent liability

19. The net contingent liability for staff benefits as at 31 December 2002 is established at USD 230,267,84 consisting of the following:

Accumulated leave	USD	119.778,39
Compensatory time	USD	1.582,20
Repatriation grant	USD	<u>109.267,25</u>
	USD	<u>230.627,84</u>

20. There is no provision in the accounts for contingent liability. The expenditures will be charged against the budget appropriations of the periods when actual payments are made. In accordance with the Staff Regulation and Rules of the Tribunal the contingent liability reflected above is based on net remuneration.

Note 4: Income

21. The Tribunal's income in the financial period 2002 totalled USD 7,974,453. Income resulted from contributions of 138 States Parties (including the European Community) totalling USD 7,807,500. In addition, income included savings due to the cancellation of prior period obligations in the amount of USD 101,066, net interest income of USD 67,057, German social security payments recovered from staff in the amount of USD 118,310 (see Note 7), which were netted with miscellaneous expenses. Losses due to fluctuations in exchange rates amounted to USD 88,146. Of the total income for 2002 from contributions of the States Parties, an amount of USD 685,397 was outstanding at the end of that Financial Period. With regard to the previous budgets of the Tribunal amounts of USD 73,214 for 1996/97, USD 40,057 for 1998, USD 183,103 for 1999, USD 180,563 for 2000 and USD 459,166 for 2001 were still outstanding. The balance of unpaid contributions with respect to the overall budgets of the Tribunal (1996/97 to 2002) therefore amount to USD 1,621,500. No allowances for doubtful accounts receivable for the overdue balances have yet been considered in the Statement of Assets, Liabilities and Working Capital at 31 December 2002, as the risks associated with these overdue balances are partly offset by the Tribunal's liability for the surrender of savings to the States Parties and further efforts undertaken by the Tribunal to collect the outstanding receivables from the States Parties.

Note 5: Expenditures

22. The Tribunal's expenditures for the Financial Period 2002 totalled USD 7,016,029. There was an over-expenditure in the amount of USD 9,204 arising from the common costs in the budget line 'Remuneration of Judges'. The amount budgeted for common costs proved to be inadequate due to the installation/removal costs incurred with respect to the election of the new President. The overall amount under the 'Judges' section is however within the budgetary provision.
23. There was an over-expenditure due to the fact four new international staff members (three of them with families) joined the Tribunal and two international staff members left the Tribunal. This represents a movement of forty percent of the total professional staff. This situation was further compounded by a negative exchange rate impact, due to a stronger Euro. The over-expenditure under this budget line amounting to USD 104,182 has been offset against savings under the "Staff cost" section and

other income recovered from German social security payments from staff in 2002 (see par. 21 above). Due to the fact that these expenditures represent authorised entitlements of the staff approved by the Meeting of the States Parties, this over expenditure was unavoidable

24. There was an over-expenditure of USD 47,465 due to the fact that the initial budgetary estimates were determined without sufficient experience in the operation of the premises. This was explained to the Meeting of States Parties in the Budget proposal 2003. These estimates were inadequate for the utilities and maintenance contracts. While economies were made in some areas, an over-expenditure could not be avoided. The overall amount under 'Operating expenditures' section is however within the budgetary provision.

Note 6: Assets

25. Contributions receivable from States Parties as at 31 December 2002 amount to a total of USD 1,621,500.
26. As at 31 December 2002, cash totaled USD 7,573,989. Included in this amount is a special account for staff assessments of USD 1,875,880. Staff assessment is a form of internal taxation on the salaries of officials employed by the organizations of the United Nations system. It is used to reimburse staff members whose salaries are subject to national income tax. For this purpose the Tribunal has maintained a Staff Assessment Account, which currently stands at USD 2,356,865. These amounts included in the total cash balance are not expendable resources of the Tribunal. The amount placed in the staff assessment account is the subject of a proposal to be discussed at the Thirteenth Meeting of the State Parties in New York from 9 to 13 June 2003.
27. The aggregate of accounts receivable, advances and deposits as at 31 December 2002 totalled USD 9,534,165.

Note 7: German Social Security Payments

28. On the basis of the German government's confirmation that the United Nations Staff Pension Fund provides for adequate benefits, the practice to reimburse German or German resident staff members insured under the statutory social insurance system for the employer's share (50%) to the pension scheme was discontinued with effect from 1 January 2002. The staff members concerned applied for the return of all payments to the German pension scheme since 1 July 1997. Following receipt of the respective amounts the employer's share, subject to a deductible equivalent to the amount of interest that could have accrued on the contributions made to the German pension scheme, was reimbursed to the Tribunal. The applicable interest rates for this purpose were calculated on the basis of the German Federal Bank's statistical overview on annual interest rates. A total of USD 66,453 was already recovered from staff members during the course of 2002. An additional amount of USD 51,857 is included in "accounts receivable - other" and will be collected in 2003 from the staff members.

Note 8: Prior Period Gains-Reserve

29. The audited Financial Statements of 1998, 1999 and 2000 showed a net gain of income over-expenditure in the amount of USD 2,633,220. Under the United Nations Financial Regulations, which the Tribunal applies *mutatis mutandis*, this amount should be surrendered by adjusting the States Parties Assessment of Contributions for the following Financial Periods. In view of the outstanding contributions and the need to build up the Working Capital Fund to an operational level and as noted in the 1999 and 2000 Financial Statements the surrender has previously been deferred. The total amount to be surrendered with regard to the 1996/97 to 2000 financial periods had been kept in a separate account. The matter was placed before the Twelfth Meeting of States Parties. The Meeting of States Parties decided that savings indicated above should be surrendered in compliance with the Financial Regulations of the United Nations and be deducted from the assessed contributions of States Parties for 2003.

International Tribunal for the Law of the Sea

Financial Report for the Financial Period

1 January - 31 December 2002

Introduction

1. The Registrar of the Tribunal for the Law of the Sea submits herewith the Financial Report for the Financial Period from 1 January to 31 December 2002. This is the sixth Financial Period and the sixth Financial Report of the International Tribunal for the Law of the Sea (ITLOS).
2. The Financial Report includes the Statement of Income and Expenditures (Statement 1), the Statement of Assets and Liabilities (Statement 2), the Notes to the Financial Statements, and Annex I (Exhibit V). Of these, Statements 1 and 2 are presented to facilitate review by States Parties to the Convention on the Law of the Sea. They are in line with the formats agreed for the harmonization of the accounts of agencies and organizations in the United Nations common system. The Financial Report provides the financial results of ITLOS activities in 2002. Highlights are summarized in the following paragraphs:

Income

3. ITLOS income in the Financial Period 2002 totalled assessed contributions of USD 7,807,500. Income resulted from contributions of 138 States Parties (including the European Community) at the end of 2002. Of the total income from contributions for 2002 an amount of USD 685,397 was outstanding as at 31 December 2002. The balance of unpaid contributions with respect to the overall budget of the Tribunal (1996 to 2002) amounted to USD 1,621,500 on that date. In addition to the above there was other net income in the total amount of USD 166,953 from different sources like interest income, German social security payments recovered and the cancellation of prior period obligations and exchange losses.

Expenditure

4. ITLOS expenditure for the Financial Period 2002 was USD 7,016,029. There were certain savings due to the non-utilization of the Contingency and the Working Capital Fund and the optimizing of resources.

Special accounts

5. A special account was maintained for staff assessment withholding from 1996 to 2002. In addition, a separate special account was also maintained for savings from the 1998 to 2000 budgets of the Tribunal, which will be deducted from the assessed contributions of the States Parties for 2003.

Working Capital Fund

6. The Twelfth Meeting of States Parties (SPLOS/89 paragraph 2) on an exceptional basis approved an amount of USD 500,00, being part of savings from the financial period 2001 to be appropriated to the Working Capital Fund of the Tribunal, in order to provide the Tribunal with necessary financial means, in the event of temporary shortfalls in funds, to consider cases to the extent that the expenditure cannot be met from the Contingency, or from the transfer of funds between appropriation sections. As a consequence of the approved transfer of savings and appropriations in previous years the Working Capital Fund currently stands at USD 1,150,000.

Institutional arrangements

7. The financial records of the Tribunal were maintained in the network version of the Sun computerized accounting system which was fully implemented in 2002.


Philippe Gautier
Registrar

EXPENDITURE REPORT 2002
(in US Dollars)

	Objects of expenditure	Approved Budget 2002	Disbursements (as at 31/12/2002)	Unliquidated Obligations (as at 31/12/2002)	Total	Balance	Total Exp./ Appr. Budget %	
1	RECURRENT EXPENDITURE							1
2	Remuneration of Judges							2
3	Annual allowances	1,295,100	1,288,742	15,062	1,304,304	-8,204	100.71	3
4	Special allowances	318,000	308,599	0	308,599	11,401	96.41	4
5	Travel of Judges to meetings	120,000	110,302	585	111,487	8,513	92.91	5
6	Judges' Pension Scheme	75,000	45,829	5,478	51,306	23,694	68.41	6
7	Staff Costs							7
8	Established posts	2,187,700	1,852,001	538,649	2,190,650	-2,950	100.13	8
9	Common staff costs	729,200	799,391	67,001	833,382	-104,182	114.29	9
10	Overtime	50,300	9,811	18,226	26,839	21,461	57.33	10
11	Temporary assistance for meetings	128,100	91,888	0	91,888	37,212	71.16	11
12	General temporary assistance	100,000	50,673	4,195	64,868	5,132	64.87	12
13	Training	30,500	24,990	0	24,990	5,510	81.30	13
14	Representation allowance	7,600	7,309	0	7,309	291	96.17	14
15	Official travel	94,700	62,303	10,509	73,212	21,488	77.31	15
16	Hospitality	7,100	3,260	342	3,602	3,498	51.01	16
17	Operating Expenditures							17
18	Maintenance of premises (incl. Facility management and contractual services)	683,300	660,552	65,213	745,765	-47,465	109.60	18
19	Rental & maintenance of equipment	207,000	101,387	36,752	138,139	68,861	66.72	19
20	Communications	145,000	62,654	8,765	69,429	75,571	47.95	20
21	Misc. services & charges (incl. bank charges)	25,000	19,779	0	19,779	5,221	79.12	21
22	Supplies and Services	65,000	29,754	15,938	45,729	39,271	55.60	22
23	Special services (external audit)	17,700	0	13,500	13,500	4,200	76.27	23
24	Library & related costs							24
25	Library - procurement of books and publications	75,000	53,036	21,386	74,432	568	99.34	25
26	Start-up costs of library	60,000	42,221	13,121	55,342	4,658	92.24	26
27	External printing and binding	64,600	8,873	55,727	64,600	0	100.00	27
28								28
29	NON-RECURRENT EXPENDITURE							29
30	Furniture and equipment							30
31	Purchase of equipment	310,000	88,799	180,851	237,610	72,390	76.66	31
32	Purchase of special equipment	30,800	0	17,379	17,379	13,421	56.43	32
33								33
34	CONTINGENCY FUND	694,300	227,526	184,363	411,929	482,391	45.06	34
35								35
36	WORKING CAPITAL FUND	50,000	0	0	0	50,000	0.00	36
	TOTAL	7,607,600	5,743,058	1,272,971	7,016,029	791,471	89.86	

International Tribunal for the Law of the Sea

Audit Procedures and Results of the Additional Audit Scope

As directed by the President of the International Tribunal for the Law of the Sea and set out in his letter dated 17 April 2003, we have audited the following aspects of operational procedures in addition to our audit of the financial statements as of 31 December 2002:

1. whether expenditures incurred have been appropriately authorized by the party designated for that purpose in the Rule of the Tribunal and the Financial Regulations of the United Nations;
2. whether staff and persons being paid by the Tribunal have been recruited or engaged in the manner provided in the Rules of the Tribunal or the Financial Regulations of the United Nations;
3. whether goods and services have been procured in accordance with the procedures provided for in the Financial Regulations of the United Nations; and
4. whether goods and services which have been procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal.

As part of our audit of the financial statements the following additional procedures have been performed by us:

a. Authorization of expenditures

As instructed, we have reviewed the procedures for the authorization of expenditures as outlined in the Financial Regulations of the United Nations, and tested on a sample basis if these procedures have been strictly followed by the Tribunal in all material respects.

As a result of the work done, no significant matter came to our attention. In our opinion the procedures for the authorization of expenditures were carried out in accordance with the Financial Regulations of the United Nations.

b. Procedures for recruiting/engaging staff

We have reviewed if the procedures for recruiting/engaging staff are in line with the Staff Regulations of the International Tribunal and United Nations staff rules and selected for testing the recruitment procedures for two new employees engaged in 2002.

As a result of the work done, no significant matters arose. In our opinion we believe that the Tribunal has carried out the procedures for recruiting staff in accordance with the Rules of the Tribunal and the Financial Regulations and staff rules of the United Nations.

c. Procedures for procurement of goods and services

We reviewed if the procedures followed by the Tribunal in the order process were in line with the Financial Regulations of the United Nations (i.e. include request of bids or tenders, fair analysis of tenders, written contracts etc.) and tested on a sample basis, that these procedures have been considered in all material respects by the Tribunal.

As a result of the work done, no significant matters came to our attention. In our opinion the procedures for procurement of goods and services were carried out in accordance with the Financial Regulations of the United Nations.

d. Examined whether goods and services procured are necessary or not excessive, having regard to circumstances and the functions of the Tribunal

As part of our audit we have examined, (1) if the expenditures reported for the fiscal year have been properly included in the Statement of income and expenditures and have been charged to the appropriate budget line, (2) if the goods and services procured were necessary or not excessive with regard to circumstances and the functions of the Tribunal.

As a result of our work we noted certain minor over-expenditures within the budget lines Judges Pension Scheme and Maintenance for the Premises. The over expenditures were not excessive high, could be reasonably explained by the Tribunal and were compensated by savings under compatible budget lines. The equipment acquired is duly listed in the inventory and is being used as required by the circumstances and the functions of the Tribunal.

[Translator's notes are in square brackets]

General Engagement Terms

for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
[German Public Auditors and Public Audit Firms]
as of January 1, 2002

This is an English translation of the German text, which is the sole authoritative version

1. Scope

- (1) These engagement terms are applicable to contracts between Wirtschaftsprüfer [German Public Auditors] or Wirtschaftsprüfungsgesellschaften [German Public Audit Firms] (hereinafter collectively referred to as the "Wirtschaftsprüfer") and their clients for audits, consulting and other engagements to the extent that something else has not been expressly agreed to in writing or is not compulsory due to legal requirements.
- (2) If, in an individual case, as an exception contractual relations have also been established between the Wirtschaftsprüfer and persons other than the client, the provisions of No. 9 below also apply to such third parties.

2. Scope and performance of the engagement

- (1) Subject of the Wirtschaftsprüfer's engagement is the performance of agreed services – not a particular economic result. The engagement is performed in accordance with the Grundsätze ordnungsmäßiger Berufsausübung [Standards of Proper Professional Conduct]. The Wirtschaftsprüfer is entitled to use qualified persons to conduct the engagement.
- (2) The application of foreign law requires – except for financial attestation engagements – an express written agreement.
- (3) The engagement does not extend – to the extent it is not directed thereto – to an examination of the issue of whether the requirements of tax law or special regulations, such as, for example, laws on price controls, laws limiting competition and Bewirtschaftungsrecht [laws controlling certain aspects of specific business operations] were observed; the same applies to the determination as to whether subsidies, allowances or other benefits may be claimed. The performance of an engagement encompasses auditing procedures aimed at the detection of the defalcation of books and records and other irregularities only if during the conduct of audits grounds therefor arise or if this has been expressly agreed to in writing.
- (4) If the legal position changes subsequent to the issuance of the final professional statement, the Wirtschaftsprüfer is not obliged to inform the client of changes or any consequences resulting therefrom.

3. The client's duty to inform

- (1) The client must ensure that the Wirtschaftsprüfer – even without his special request – is provided, on a timely basis, with all supporting documents and records required for and is informed of all events and circumstances which may be significant to the performance of the engagement. This also applies to those supporting documents and records, events and circumstances which first become known during the Wirtschaftsprüfer's work.
- (2) Upon the Wirtschaftsprüfer's request, the client must confirm in a written statement drafted by the Wirtschaftsprüfer that the supporting documents and records and the information and explanations provided are complete.

4. Ensuring independence

The client guarantees to refrain from everything which may endanger the independence of the Wirtschaftsprüfer's staff. This particularly applies to offers of employment and offers to undertake engagements on one's own account.

5. Reporting and verbal information

If the Wirtschaftsprüfer is required to present the results of his work in writing, only that written presentation is authoritative. For audit engagements the long-form report should be submitted in writing to the extent that nothing else has been agreed to. Verbal statements and information provided by the Wirtschaftsprüfer's staff beyond the engagement agreed to are never binding.

6. Protection of the Wirtschaftsprüfer's intellectual property

The client guarantees that expert opinions, organizational charts, drafts, sketches, schedules and calculations – especially quantity and cost computations – prepared by the Wirtschaftsprüfer within the scope of the engagement will be used only for his own purposes.

7. Transmission of the Wirtschaftsprüfer's professional statements

- (1) The transmission of a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) to a third party requires the Wirtschaftsprüfer's written consent to the extent that the permission to forward to a certain third party does not result from the engagement terms.
- The Wirtschaftsprüfer is liable (within the limits of No. 9) towards third parties only if the prerequisites of the first sentence are given.
- (2) The use of the Wirtschaftsprüfer's professional statements for promotional purposes is not permitted; an infringement entitles the Wirtschaftsprüfer to immediately cancel all engagements not yet conducted for the client.

8. Correction of deficiencies

- (1) Where there are deficiencies, the client is entitled to subsequent fulfillment of the contract. The client may demand a reduction in fees or the cancellation of the contract only for the failure to subsequently fulfil [the contract]; if the engagement was awarded by a person claiming on a commercial business as part of that commercial business, a government-owned legal person under public law or a special government-owned fund under public law, the client may demand the cancellation of the contract only if the services rendered are of no interest to him due to the failure to subsequently fulfil [the contract]. No. 9 applies to the extent that claims for damages exist beyond this.
- (2) The client must assert his claim for the correction of deficiencies in writing without delay. Claims pursuant to the first paragraph not arising from an intentional tort cease to be enforceable one year after the commencement of the statutory time limit for enforcement.
- (3) Obvious deficiencies, such as typing and arithmetical errors and formelle Mängel [deficiencies associated with technicalities] contained in a Wirtschaftsprüfer's professional statements (long-form reports, expert opinions and the like) may be corrected – and also be applicable versus third parties – by the Wirtschaftsprüfer at any time. Errors which may call into question the conclusions contained in the Wirtschaftsprüfer's professional statements entitle the Wirtschaftsprüfer to withdraw – also versus third parties – such statements. In the cases noted the Wirtschaftsprüfer should first hear the client, if possible.

9. Liability

- (1) The liability limitation of § ["Article"] 323 (2) [paragraph 2] HGB ["Handelsgesetzbuch": German Commercial Code] applies to statutory audits required by law.

(2) Liability for negligence: An individual case of damages

If neither No. 1 is applicable nor a regulation exists in an individual case, pursuant to § 54a (1) no. 2 WPO ["Wirtschaftsprüferordnung": Law regulating the Profession of Wirtschaftsprüfer] the liability of the Wirtschaftsprüfer for claims of compensatory damages of any kind – except for damages resulting from injury to life, body or health – for an individual case of damages resulting from negligence is limited to € 4 million; this also applies if liability to a person other than the client should be established. An individual case of damages also exists in relation to a uniform damage arising from a number of breaches of duty. The individual case of damages encompasses all consequences from a breach of duty without taking into account whether the damages occurred in one year or in a number of successive years. In this case multiple acts or omissions of acts based on a similar source of error or on a source of error of an equivalent nature are deemed to be a uniform breach of duty if the matters in question are legally or economically connected to one another. In this event the claim against the Wirtschaftsprüfer is limited to € 5 million. The limitation to the fivefold of the minimum amount insured does not apply to compulsory audits required by law.

(3) Preclusive deadlines

A compensatory damages claim may only be lodged within a preclusive deadline of one year of the rightful claimant having become aware of the damage and of the event giving rise to the claim – at the very latest, however, within 5 years subsequent to the event giving rise to the claim. The claim expires if legal action is not taken within a six month deadline subsequent to the written refusal of acceptance of the indemnity and the client was informed of this consequence. The right to assert the bar of the preclusive deadline remains unaffected. Sentences 1 to 3 also apply to legally required audits with statutory liability limits.

10. Supplementary provisions for audit engagements

(1) A subsequent amendment or abridgement of the financial statements or management report audited by a Wirtschaftsprüfer and accompanied by an auditor's report requires the written consent of the Wirtschaftsprüfer even if these documents are not published. If the Wirtschaftsprüfer has not issued an auditor's report, a reference to the audit conducted by the Wirtschaftsprüfer in the management report or elsewhere specified for the general public is permitted only with the Wirtschaftsprüfer's written consent and using the wording authorized by him.

(2) If the Wirtschaftsprüfer revokes the auditor's report, it may no longer be used. If the client has already made use of the auditor's report, he must announce its revocation upon the Wirtschaftsprüfer's request.

(3) The client has a right to 5 copies of the long-form report. Additional copies will be charged for separately.

11. Supplementary provisions for assistance with tax matters

(1) When advising on an individual tax issue as well as when furnishing continuous tax advice, the Wirtschaftsprüfer is entitled to assume that the facts provided by the client – especially numerical disclosures – are correct and complete; this also applies to bookkeeping engagements. Nevertheless, he is obliged to inform the client of any errors he has discovered.

(2) The tax consulting engagement does not encompass procedures required to meet deadlines, unless the Wirtschaftsprüfer has explicitly accepted the engagement for this. In this event the client must provide the Wirtschaftsprüfer, on a timely basis, all supporting documents and records – especially tax assessments – material to meeting the deadlines, so that the Wirtschaftsprüfer has an appropriate time period available to work therewith.

(3) In the absence of other written agreements, continuous tax advice encompasses the following work during the contract period:

- a) preparation of annual tax returns for income tax, corporation tax and business tax, as well as net worth tax returns on the basis of the annual financial statements and other schedules and evidence required for tax purposes to be submitted by the client
- b) examination of tax assessments in relation to the taxes mentioned in (a)
- c) negotiations with tax authorities in connection with the returns and assessments mentioned in (a) and (b)
- d) participation in tax audits and evaluation of the results of tax audits with respect to the taxes mentioned in (a)
- e) participation in Einspruchs- und Beschwerdeverfahren [appeals and complaint procedures] with respect to the taxes mentioned in (a).

In the above-mentioned work the Wirtschaftsprüfer takes material published legal decisions and administrative interpretations into account.

(4) If the Wirtschaftsprüfer receives a fixed fee for continuous tax advice, in the absence of other written agreements the work mentioned under paragraph 3 (d) and (e) will be charged separately.

(5) Services with respect to special individual issues for income tax, corporate tax, business tax, valuation procedures for property and net worth taxation, and net worth tax as well as all issues in relation to sales tax, wages tax, other taxes and dues require a special engagement. This also applies to:

- a) the treatment of nonrecurrent tax matters, e. g. in the field of estate tax, capital transactions tax, real estate acquisition tax
- b) participation and representation in proceedings before tax and administrative courts and in criminal proceedings with respect to taxes, and
- c) the granting of advice and work with respect to expert opinions in connection with conversions of legal form, mergers, capital increases and reductions, financial reorganizations, admission and retirement of partners or shareholders, sale of a business, liquidations and the like.

(6) To the extent that the annual sales tax return is accepted as additional work, this does not include the review of any special accounting prerequisites nor of the issue as to whether all potential legal sales tax reductions have been claimed. No guarantee is assumed for the completeness of the supporting documents and records to validate the deduction of the input tax credit.

12. Confidentiality towards third parties and data security

(1) Pursuant to the law the Wirtschaftsprüfer is obliged to treat all facts that he comes to know in connection with his work as confidential, irrespective of whether these concern the client himself or his business associations, unless the client releases him from this obligation.

(2) The Wirtschaftsprüfer may only release long-form reports, expert opinions and other written statements on the results of his work to third parties with the consent of his client.

(3) The Wirtschaftsprüfer is entitled – within the purposes stipulated by the client – to process personal data entrusted to him or allow them to be processed by third parties.

13. Default of acceptance and lack of cooperation on the part of the client

If the client defaults in accepting the services offered by the Wirtschaftsprüfer or if the client does not provide the assistance incumbent on him pursuant to No. 3 or otherwise, the Wirtschaftsprüfer is entitled to cancel the contract immediately. The Wirtschaftsprüfer's right to compensation for additional expenses as well as for damages caused by the default or the lack of assistance is not affected, even if the Wirtschaftsprüfer does not exercise his right to cancel.

14. Remuneration

(1) In addition to his claims for fees or remuneration, the Wirtschaftsprüfer is entitled to reimbursement of his outlays: sales tax will be billed separately. He may claim appropriate advances for remuneration and reimbursement of outlays and make the rendering of his services dependent upon the complete satisfaction of his claims. Multiple clients awarding engagements are jointly and severally liable.

(2) Any set off against the Wirtschaftsprüfer's claims for remuneration and reimbursement of outlays is permitted only for undisputed claims or claims determined to be legally valid.

15. Retention and return of supporting documentation and records

(1) The Wirtschaftsprüfer retains, for seven years, the supporting documents and records in connection with the completion of the engagement – that had been provided to him and that he has prepared himself – as well as the correspondence with respect to the engagement.

(2) After the settlement of his claims arising from the engagement, the Wirtschaftsprüfer, upon the request of the client, must return all supporting documents and records obtained from him or for him by reason of his work on the engagement. This does not, however, apply to correspondence exchanged between the Wirtschaftsprüfer and his client and to any documents of which the client already has the original or a copy. The Wirtschaftsprüfer may prepare and retain copies or photocopies of supporting documents and records which he returns to the client.

16. Applicable law

Only German law applies to the engagement, its conduct and any claims arising therefrom.

Special Conditions

Governing the Raising of the Limit of Liability defined
in the General Terms of Engagement for
Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften
as amended January 1, 2001

Instead of the lower liability limit for single cases defined in section 9 (2) of the enclosed General Terms of Engagement a uniform limit of Euro 10 million shall apply.

Where the Client is of the opinion that the engagement involves a risk significantly in excess of Euro 10 million, we are prepared to raise the limit on our liability to a reasonable amount in exchange for an adequate increase in our fees, provided that insurance cover can be obtained.

The above shall not apply where a higher or lower limit on liability for professional services is prescribed by law, e.g. for a statutory audit.

Where a loss is due to several causes, we shall be liable only if our negligence or the negligence of our staff has contributed to the loss, and only for the proportion of the loss corresponding to the extent of such contribution, subject to the agreed limit on our liability; this provision shall apply in particular to all engagements to be performed jointly with other members of the profession.

In addition to section 7 (1) of the General Terms of Engagement we point out that a limitation of our liability agreed with our client will also apply to any third party who is affected by the engagement.

Exclusive place of jurisdiction for any action or other legal proceedings arising out of or in connection with this engagement shall be the court competent for the office in charge for this engagement.