

AGREEMENT

between

the Austrian Federal Government

hereinafter referred to as "the Government",

and

the Office of the United Nations
High Commissioner for Refugees,

hereinafter referred to as "UNHCR",

CONCERNING THE CO-OPERATION OF UNHCR IN ASYLUM PROCEDURES WHERE THE APPLICATION HAS BEEN FILED AT THE TIME OF THE BORDER CONTROL FOLLOWING ENTRY VIA AN AIRPORT

Acting on the basis of article 35, paragraph (1), of the Convention relating to the Status of Refugees of 28 July 1951 (hereinafter referred to as the "Convention") and article II, paragraph (1), of the Protocol relating to the Status of Refugees of 31 January 1967, and on the basis of article 39, paragraph (3), of the Austrian Federal Law concerning the Granting of Asylum (hereinafter referred to as the "Asylum Act"), the contracting parties hereby agree as follows:

Article I

- (1) The object of this Agreement is the participation operation of UNHCR in examining cases where the application for asylum has been filed at the time of the border control following entry via an airport and where, pursuant to article 39, paragraph (3), of the Asylum Act, applications may not be dismissed as being manifestly unfounded or rejected by reason of existing protection in a safe third country, except with the consent of UNHCR.
- (2) With a view to the prompt processing of such cases, UNHCR has created the Post, Number 417020, of a Protection Assistant (Airport Officer; hereinafter referred to as "the Post") at the "General Service" category, i.e. the Post should be filled with a locally recruited staff member, who will be remunerated according to the salary scale of the United Nations applicable in Austria.

Article II

- (1) The Government undertakes to contribute to the financing of the Post by paying one half of the personnel costs (including 14% administrative charges), which arise for its incumbent in accordance with the Staff Rules and Regulations of the United Nations. The total amount of that contribution for the year 2002 shall be € 29,000.
- (2) The Government shall not exert any influence regarding the selection of the incumbent of the Post or the discharge of the latter's duties.

Article III

- (1) The duty station of the Airport Officer shall be the UNHCR Office in Vienna.
- (2) UNHCR undertakes in cases presented by the Austrian Federal Asylum Agency (hereinafter referred to as "the Agency") to respond in principle within 48 hours (working days of the Office and in Austria) and at the latest within 96 hours. Should an interview with the asylum seeker be necessary for UNHCR's response, the Agency will provide UNHCR with an interpreter free of charge.
- (3) If a response in the case cannot be made within 48 hours, UNHCR shall notify the Agency thereof prior to expiry of the time limit. If the person concerned is not subject to a measure to guarantee his or her rejection at the border, the response time limit shall be extended by the period necessary for its observance in other cases that are at the same time with UNHCR while measures to guarantee rejection at the border are in force; in such cases, the response shall be made within 20 working days.
- (4) If UNHCR disagrees with the decision taken by the Agency, it shall provide a statement containing a summary of the reasons underlying its opinion.
- (5) UNHCR undertakes to treat confidentially the cases submitted to it by the Agency. That undertaking shall not, however, apply to information, which UNHCR intends to provide on a voluntary basis to the Austrian asylum authorities and higher courts ("Verwaltungsgerichtshof" and "Verfassungsgerichtshof").
- (6) UNHCR undertakes to prepare on an annual basis statistics of the cases submitted to it by the Agency and of the opinions given thereon. Such statistics, which shall each time cover one calendar year, shall be made available to the Austrian Federal Ministry of the Interior (hereinafter referred to as "the MOI") by 31 January of the following year.

Article IV

- (1) UNHCR shall draw up a job description for the Post, which shall contain a detailed description of the duties to be performed by the Airport Officer and shall set out the required qualifications of the person to be appointed, in particular a legal education. UNHCR shall forward this job description to the MOI.
- (2) The person appointed to the Post shall be a staff member of UNHCR and his or her conditions of employment shall be subject solely to the Staff Regulations and Rules of the United Nations then in force.
- (3) UNHCR undertakes to instruct and guide the incumbent of the Post in order that he or she can perform the duties listed in the job description for the Post.
- (4) UNHCR undertakes to allow the incumbent of the Post to participate, at the expense of the Office, in ongoing training programmes that are made available by the Office to its staff members in accordance with internal practice.

Article V

- (1) The payment of the contribution referred to in article II shall be made annually.
- (2) The first payment shall be made within four weeks following signature of the present Agreement. With regard to the following years, the payment shall be made within four weeks following presentation of the previous year's account, as referred to in paragraph (4).
- (3) The contribution for 2002, as indicated in article II, paragraph (1), shall be increased in the following years in line with expenditures actually foreseen by the Branch Office Vienna and made in accordance with Staff Rules and Regulations of the United Nations, to be communicated to the Government.
- (4) UNHCR shall submit to the MOI, by 31 March of the following year at the latest, an account of all payments which arise to its incumbent in accordance with the internal regulations of the Office. A positive balance in respect of the payment effected by the Government shall be credited to the payment of the Government for the following year, as referred to in article V, paragraph (2).

Article VI

- (1) The present Agreement shall enter into force upon signature by the parties with retroactive effect from 1 January 2002 and shall be concluded for an indefinite period.
- (2) The Agreement may be terminated by either party at the end of each calendar year. Such notice has to be given to the other party in writing by registered mail, and has to be received, at the latest, four months before the intended termination.

Article VII

- (1) Any difference or dispute arising out of this Agreement shall be resolved by negotiation between the parties. If the difference or dispute cannot be resolved by negotiation, either party may request that an arbitrator be appointed by the President of the International Court of Justice.
- (2) Reasons shall be given for the decision rendered in the arbitration proceedings and the parties agree to regard that verdict as the final settlement of the difference or dispute. The costs of the arbitral tribunal shall be borne by the parties to the extent of one half each.

Article VIII

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities which UNHCR enjoys as an integral part of the United Nations, or of the Government.

Article IX

The Agreement shall be drawn up in duplicate, each party retaining one copy, in German and English, both texts being equally authentic. However, in case of a dispute over the interpretation of the present Agreement, the English version will prevail.

Vienna, this day of

Vienna, this day of

For the Austrian Federal Government:

For UNHCR:

Ambassador Dr. Christian B. M. Berlakovits,
Head of Section IV,
Federal Ministry for Foreign Affairs

Dr. Gottfried Köfner,
UNHCR Representative
in Austria