

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2012 Nr. 73

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Internationale Organisatie voor Migratie inzake de juridische status, de privileges en immuniteiten van de Organisatie en haar medewerkers in Nederland; 's-Gravenhage, 28 maart 2012*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the International Organization for Migration on the Legal Status, on the Privileges and Immunities of the Organization and its staff members in the Netherlands**

The Kingdom of the Netherlands,  
and

The International Organization for Migration, hereinafter called the Organization,

Recalling the *Agreement between the Kingdom of the Netherlands and the International Organization for Migration on the Legal Status, the Privileges and Immunities of the Organization in the Netherlands* concluded on 1 May 1990,

Considering that the Kingdom of the Netherlands is a founding member of the Organization,

Desirous of further strengthening and developing the friendly relations and cooperation between the Kingdom of the Netherlands and the Organization,

Considering that the purpose and functions of the Organization and the activities carried out by the Organization and its staff warrant the granting in the Kingdom of the Netherlands to the Organization and its staff of privileges and immunities substantially identical to those accorded to other intergovernmental organizations in the Netherlands and their staff,

Have agreed as follows:

## Article 1

### *Definitions*

In this Agreement:

- a) „Constitution” means the Constitution of the International Organization for Migration;
- b) „Organization” means the International Organization for Migration;
- c) „Chief of Mission” means the Chief of Mission of the Organization in the Netherlands;
- d) „staff member” means any person appointed or recruited for employment with the Organization in the Netherlands to carry out its official activities and subject to IOM staff regulations and rules, except those who are locally recruited and remunerated on an hourly basis;
- e) „members of the family forming part of a Staff member’s household” has the meaning specified in Article 11 of this Agreement;
- f) „Office of the Organization” means the Office of the International Organization for Migration in the Netherlands;
- g) „premises” means the buildings, parts of buildings and land or facilities ancillary thereto, including installations and facilities made available to, or maintained, occupied or used by, the Organization in the Netherlands for the performance of its official activities;
- h) „archives of the Organization” means all records, correspondence, documents, manuscripts, computer and media data, photographs, films, video and sound recordings and any other material belonging to or held by the Organization or any of its staff members in an official function;
- i) „host State” means the Kingdom of the Netherlands;
- j) „Government” means the Government of the Kingdom of the Netherlands;
- k) „the competent authorities” means national, provincial, municipal and other competent authorities under the laws, regulations and customs of the host State;
- l) „The Vienna Convention” means the Vienna Convention on Diplomatic Relations of 18 April 1961.

## Article 2

*Legal personality*

The Organization shall possess full international legal personality in the Netherlands pursuant to Article 27 of the Constitution.

## Article 3

*Funds, assets and other property*

a) The Organization, its funds, assets and other property, wherever located and by whomever held, shall enjoy immunity from every form of legal process, except in so far as in any particular case the Organization has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

b) Funds, assets and other property of the Organization, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

c) To the extent necessary to carry out the functions of the Organization, funds, assets and other property of the Organization, wherever located and by whomsoever held, shall be exempt from restrictions, regulations, control or moratoria of any nature.

## Article 4

*Inviolability of the premises*

1. The premises of the Office of the Organization shall be inviolable. The competent authorities shall ensure that the Office of the Organization is not dispossessed and/or deprived of all or any part of its premises without its express consent.

2. The competent authorities shall not enter the premises of the Office of the Organization to perform any official duty, except with the express consent, or at the request of the Chief of Mission, or a staff member of the Office of the Organization designated by him or her. Judicial actions and the service or execution of legal process, including the seizure of private property, cannot be enforced on the premises of the Office of the Organization except with the consent of and in accordance with conditions approved by the Chief of Mission.

3. In case of fire or other emergency requiring prompt protective action, or in the event that the competent authorities have reasonable cause to believe that such an emergency has occurred or is about to occur on the premises of the Office of the Organization, the consent of the Chief of Mission, or a staff member of the Office of the Organization designated by him or her, to any necessary entry into the premises of the Office of the Organization shall be presumed if neither of them can be contacted in time.

4. Subject to paragraphs 1, 2 and 3 of this Article, the competent authorities shall take the necessary action to protect the premises of the Office of the Organization against fire or other emergency.

5. The Office of the Organization shall prevent its premises from being used as a refuge by persons who are avoiding arrest or the proper administration of justice under any law of the host State.

#### Article 5

##### *Inviolability of the Archives and official equipment*

1. The archives of the Organization, wherever located and by whomsoever held, shall be inviolable at any time.

2. The official equipment and other official material, necessary for the Organization's official activities shall be inviolable at any time.

#### Article 6

##### *Law and authority in the Office of the Organization*

1. The premises of the Office of the Organization shall be under the control and authority of the Organization, as provided under this Agreement.

2. Except as otherwise provided in this Agreement, the laws and regulations of the host State shall apply on the premises of the Office of the Organization.

#### Article 7

##### *Facilities and immunities in respect of communications and publications*

1. The Government shall permit the Organization to communicate, freely and without a need for special permission, for all official purposes, and shall protect the right of the Organization to do so.

2. The Organization shall have the right to use codes and to dispatch and receive official correspondence and other official communications by courier or in sealed bags which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

3. No censorship shall be applied to the official communications of the Organization.

4. Nothing in paragraphs 2 and 3 in this Article shall be construed to preclude the adoption of appropriate security precautions determined by agreement between the host State and the Organization.

#### Article 8

##### *Exemption of the Organization and its property from taxes and duties*

1. Within the scope of its official activities, the Organization, its assets, income and other property shall be exempt from all direct taxes, whether levied by national, provincial or local authorities.

2. Within the scope of its official activities, the Organization shall be exempt from:

- a) motor vehicle tax (*motorrijtuigenbelasting*);
- b) tax on passenger motor vehicles and motorcycles (*BPM*);
- c) value-added tax paid on all goods and services supplied on a recurring basis or involving considerable expenditure (*omzetbelasting*);
- d) excise duty (*accijns*) included in the price of alcoholic beverages and hydrocarbons;
- e) import and export taxes and duties (*belastingen bij invoer en uitvoer*);
- f) insurance tax (*assurantiebelasting*);
- g) real property transfer tax (*overdrachtsbelasting*);
- h) any other taxes and duties of a substantially similar character to the taxes and duties provided for in this paragraph, imposed by the host State subsequent to the date of signature of this Agreement.

3. The value added tax paid in respect of goods supplied or services rendered to the Organization shall be refunded to the Organization on application.

4. The tax on hydrocarbons such as fuel oil and motor fuels which the Organization requires for official purposes shall be refunded to the Agency on application. The Organization shall be exempted in advance from excise duties on goods supplied and required for official purposes, purchased from a "*accijnsgoederenplaats*", if a permit thereto is acquired from the national tax Authority.

5. The Organization shall submit applications for reimbursement within three months after the quarter during which payment was made for goods supplied or services rendered and shall send the relevant documents together with the applications.

6. The Organization undertakes to facilitate the verification by the competent authorities of the facts on which the tax exemption or tax refund can be based.

7. Reimbursement of the above mentioned taxes and duties shall be done in conformity with the applicable tax regulations and quotas set by the Government.

8. Goods acquired or imported under the terms set out in paragraph 2 of this Article shall not be sold, given away or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

9. This Article shall not apply to taxes and duties that are no more than charges for public utility services.

#### Article 9

##### *Freedom of financial assets from restrictions*

The Organization may receive and hold any kind of funds, currency, cash or securities. It may dispose of them freely for any purpose in accordance with its official activities and hold accounts in any currency to the extent required to meet its obligations.

#### Article 10

##### *Privileges and immunities of the Chief of Mission and other staff members of the Organization*

1. The staff members of the Organization shall enjoy such privileges, immunities and facilities as are necessary for the independent performance of their functions. They shall be accorded:

- a) immunity from personal arrest or detention or any other restriction of their liberty, and from seizure of their personal baggage;
- b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in their official capacity;
- c) inviolability of all official papers, documents in whatever form and materials;
- d) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Organization;
- e) exemption from national service obligations;

- f) together with members of their family forming part of their household, exemption from immigration restrictions or alien registration;
- g) exemption from inspection of their personal baggage, unless there are serious grounds for believing that the baggage contains articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the host State; an inspection in such a case shall be conducted in the presence of the staff member concerned;
- h) the same privileges in respect of currency and exchange facilities as are accorded to the officials of comparable rank of diplomatic missions established in the host State;
- i) together with members of their family forming part of their household, the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the Vienna Convention;
- j) within the existing legal framework, the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State, and to re-export their furniture and effects free of duties and taxes to their country of permanent residence.

2. In addition to the privileges and immunities specified in paragraph 1 of this Article:

- a) The Chief of Mission, together with members of the family forming part of the household who are not nationals or permanent residents of the host State, shall enjoy the same privileges and immunities as the host State accords to heads of diplomatic missions accredited to the host State in accordance with the Vienna Convention;
- b) The highest ranking staff, together with members of their family forming part of their household who are not nationals or permanent residents of the host State, shall be accorded the same privileges, immunities and facilities as the host State accords to diplomatic agents of comparable rank of the diplomatic missions established in the host State in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties;
- c) Administrative and technical staff shall be accorded the same privileges, immunities and facilities as the host State accords to members of the administrative and technical staff of diplomatic missions established in the host State, in conformity with the Vienna Convention, provided that the immunity from criminal jurisdiction and personal inviolability shall not extend to acts performed outside the course of their official duties;
- d) Service staff of the Organization shall enjoy the same privileges and immunities as the host State accords to service staff of the diplomatic missions established in the host State in accordance with the Vienna Convention.

3. The host State shall, in consultation with the Organization, determine which categories of personnel will be covered by each of the four groups referred to in paragraph 2 of this Article.

4. The host State shall not be obliged to exempt from income tax pensions or annuities paid to staff members of the Organization and their dependants.

5. Persons referred to in this Article who are nationals or permanent residents of the host State shall enjoy only the following privileges, immunities and facilities to the extent necessary for the independent performance of their functions:

a) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the performance of their functions for the Organization;

b) inviolability of all papers, documents in whatever form and materials relating to the performance of their functions for the Organization;

c) exemption from taxation on salaries, emoluments and allowances paid to them in respect of their employment with the Organization.

d) within the existing legal framework, the right to import free of duties and taxes, except payments for services, their furniture and effects at the time of first taking up their post in the host State.

6. Immunity from jurisdiction shall not apply in the case of a civil action brought by a third party for damage resulting from a motor traffic offence.

7. The privileges and immunities accorded in this Agreement to the staff members of the Organization are provided solely to ensure in all circumstances the unimpeded functioning of the Organization and the complete independence of the persons to whom they are accorded and not for the personal benefit of the individuals themselves.

#### Article 11

##### *Family members forming part of the household of a staff member of the Organization*

The following persons shall be considered members of the family forming part of the household of a staff member of the Organization:

a) the spouses or registered partners of staff members of the Organization;

b) children of staff members of the Organization who are under the age of 18;

c) children of the staff members of the Organization aged 18 or over, but not older than 27, provided that they formed part of the household prior to their first entry into the host State and still form part of this



household, and that they are unmarried, financially dependent on the staff member of the Organization and are attending fulltime education in the host State;

d) children of staff members of the Organization who are aged 18 or over, but not older than 23, shall also be recognised as members of the family forming part of the household if they are not studying, as long as they are unmarried and financially dependent on the staff member of the Organization;

e) any other persons who, in exceptional cases or for humanitarian reasons, the Organization and the host State agree to treat as members of the family forming part of the household.

## Article 12

### *Employment of family members forming part of the household*

1. Members of the family forming part of the household of any staff member of the Organization shall be authorised to engage in gainful employment in the host State for the duration of the term of office of the staff member concerned.

2. Persons mentioned in paragraph 1 who obtain gainful employment shall enjoy no immunity from criminal, civil or administrative jurisdiction with respect to matters arising in the course of or in connection with such employment. However, any measures of execution shall be taken without infringing the inviolability of their person or of their residence, if they are entitled to such inviolability.

3. In case of the insolvency of a person aged under 18 with respect to a claim arising out of gainful employment of that person, the immunity of the staff member of the Organization of whose family the person concerned is a member shall be waived for the purpose of settlement of the claim, in accordance with the provisions of Article 15 of this Agreement.

4. The employment referred to in paragraph 1 shall be in accordance with the legislation of the host State, including fiscal and social security legislation.

## Article 13

### *Notification*

1. The Organization shall promptly notify the Government of:

a) the appointment of the Chief of Mission, the Deputy Chief of Mission and other staff members of the Organization, their arrival and their final departure, or the termination of their functions with the Organization;

b) the arrival and final departure of members of the families forming part of the households of the persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that a person has ceased to form part of the household.

c) The arrival and final departure of private or domestic servants of persons referred to in subparagraph 1(a) of this Article and, where appropriate, the fact that they are leaving the employment of such person.

2. The Government shall - in accordance with the policy of the Ministry - issue to the Chief of Mission, the Deputy Chief of Mission and other staff members of the Organization and members of their families who form part of their household and to private or domestic servants an identity card bearing the photograph of the holder. This card shall serve to identify the holder in relation to all authorities of the Kingdom of the Netherlands.

3. At the final departure of the persons referred to in paragraph 2 of this Article or when these persons have ceased to perform their functions, the identity card referred to in paragraph 2 of this Article shall be promptly returned by the Organization to the Ministry of Foreign Affairs.

#### Article 14

##### *Social security*

1. The social security system of the Organization offers coverage comparable to the coverage under the legislation of the host State. The Organization and the staff members of the Organization to whom the above-mentioned scheme applies shall be exempt from social security provisions of the host State. Consequently, they shall not be covered against the risks described in the social security provisions of the host State. This exemption applies to them, unless they take up gainful activity in the host State.

2. Any provident fund established by or conducted under the authority of the Organization shall enjoy legal capacity in the Kingdom of the Netherlands if the Organization so requests and shall enjoy the same exemptions, privileges and immunities as the Organization itself.

## Article 15

*Waiver of privileges and immunities*

The Director General has the right and the duty to waive the immunities accorded in this Agreement in any particular case where, in his or her opinion, they would impede the course of justice and can be waived without prejudice to the purpose for which they are accorded.

## Article 16

*Cooperation with the competent authorities*

1. The Organization shall cooperate with the competent authorities to facilitate the enforcement of the laws of the host State, to secure the observance of police regulations and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities accorded under this Agreement.

2. The Organization and the host State shall cooperate on security matters, taking into account the public order and national security of the host State.

3. Without prejudice to their privileges, immunities and facilities, it is the duty of all persons enjoying such privileges, immunities and facilities to respect the laws and regulations of the host State. They also have the duty not to interfere in the internal affairs of the host State.

4. The Organization shall cooperate with the competent authorities responsible for health, safety at work, electronic communications and fire prevention.

5. The Organization shall observe all security directives as agreed with the host State, as well as all directives of the competent authorities responsible for fire prevention regulations.

6. The right of the Government to take all precautionary measures in the interests of its security shall not be prejudiced by any provision in this Agreement.

## Article 17

*Dispute settlement*

The Organization shall submit to an international arbitration tribunal any dispute (other than a dispute concerning the interpretation or application of the Constitution or any succeeding Constitution):

1. arising out of damage caused by the Organization;
2. involving any other non-contractual responsibility of the Organization;
3. disputes of a private-law character to which the Organization is a party.

#### Article 18

##### *Disputes arising out of this Agreement*

1. All differences arising out of the interpretation or application of this Agreement or supplementary arrangements or agreements between the Organization and the host State shall be settled by consultation, negotiation or other agreed mode of settlement.

2. If the difference is not settled in accordance with paragraph 1 of this Article within three months following a written request by one of the Parties to the difference, it shall, at the request of either Party, be referred to an arbitral tribunal according to the procedure set forth in paragraphs 3 to 5 of this Article.

3. The arbitral tribunal shall be composed of three members: one to be chosen by each Party and the third, who shall be the chairperson of the tribunal, to be chosen by the other two members. If either Party has failed to make its appointment of a member of the tribunal within two months of the appointment of a member by the other Party, that other Party may invite the President of the International Court of Justice to make such appointment. Should the first two members fail to agree upon the appointment of the chairperson of the tribunal within two months following their appointment, either Party may invite the President of the International Court of Justice to choose the chairperson.

4. Unless the parties otherwise agree, the arbitral tribunal shall determine its own procedure and the expenses shall be borne by the Parties as assessed by the tribunal.

5. The arbitral tribunal, which shall decide by a majority of votes, shall reach a decision on the difference on the basis of the provisions of this Agreement and subsequent arrangements or agreements and the applicable rules of international law. The decision of the arbitral tribunal shall be final and binding on the Parties.

## Article 19

*Entry into force, Termination, Amendments and others*

1. This Agreement shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with, and its provisions shall have effect on that same day.

2. Notwithstanding the provisions of Paragraph 1 of this Article, the fiscal privileges as mentioned in Article 8, Article 10, paragraph 1, under d and Article 10, paragraph 5, under c, shall have effect on the first day of January in the calendar year in which the Agreement has entered into force.

3. Upon its entry into force, this Agreement shall supersede the Agreement concluded on 1 May 1990 between the Kingdom of the Netherlands and the Organization.

4. This Agreement shall cease to be in force twelve months after either of the Parties shall have given notice in writing to the other of its decision to terminate this Agreement.

5. This Agreement may be amended at any time by mutual agreement in writing.

6. With respect to the Kingdom of the Netherlands, this Agreement shall apply to the part of the Kingdom in Europe only.

DONE at The Hague on 28 March 2012 in two originals in the English language, each text being equally authentic.

*For the Kingdom of the Netherlands:*

E. KRONENBURG  
Secretary General of the Ministry of Foreign Affairs

*For the International Organization for Migration:*

L. THOMPSON  
Deputy Director General

D. PARLEMENT

Het Verdrag behoeft niet de goedkeuring van de Staten-Generaal ingevolge artikel 7, onderdeel a, van de Rijkswet goedkeuring en bekendmaking verdragen en artikel 3 van de Wet van 24 december 1947 (*Stb.* H 452), houdende goedkeuring van de toetreding tot het voor de Algemene Vergadering van de Verenigde Naties op 13 februari 1946 aangenomen Verdrag nopens de voorrechten en immuniteiten van de Verenigde Naties (*Stb.* I 224). Dit artikel luidt:

„Artikel 3

Wij behouden Ons voor verdragen te bekrachtigen en andere maatregelen te nemen teneinde aan andere internationale organisaties overeenkomstige voorrechten en immuniteiten toe te kennen als in het in artikel 1 bedoelde Verdrag worden toegekend aan de Verenigde Naties.”.

Deze Wet is gecontrasigneerd door de Minister van Buitenlandse Zaken W. F. VAN BOETZELAER, de Minister van Justitie J. H. VAN MAARSEVEEN, de Minister van Financiën P. LIEFTINCK en de Minister van Overzeese Gebiedsdelen a.i. GÖTZEN.

Voor de behandeling in de Staten-Generaal zie Kamerstukken II 1947/1948, 629; Hand. II 1947/1948, blz. 636; Hand. I 1947/1948, 629.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 19, eerste lid, in werking treden op de dag dat beide partijen elkaar schriftelijk in kennis hebben gesteld, dat aan de juridische vereisten voor inwerkingtreding is voldaan.

J. VERWIJZINGEN**Verbanden**

Het Verdrag dient ter vervanging van:

- Titel : Overeenkomst tussen het Koninkrijk der Nederlanden en de Internationale Organisatie voor Migratie betreffende de juridische status, de voorrechten en immuniteiten van de Organisatie in Nederland; 's-Gravenhage, 1 mei 1990
- Tekst : *Trb.* 1990, 81 (Engels)

**Overige verwijzingen**

- Titel : Statuut van het Internationaal Gerechtshof; San Francisco, 26 juni 1945
- Tekst : *Trb.* 1971, 55 (Engels, Frans en vertaling, herzien)
- Laatste *Trb.* : *Trb.* 1997, 106
- Titel : Statuut van de Internationale Organisatie voor Migratie; Venetië, 19 oktober 1953
- Tekst : *Trb.* 1988, 21 (Frans, Engels en vertaling, herzien)
- Laatste *Trb.* : *Trb.* 2006, 82
- Titel : Verdrag van Wenen inzake diplomatiek verkeer; Wenen, 18 april 1961
- Tekst : *Trb.* 1962, 101 (Engels en Frans)
- Trb.* 1962, 159 (vertaling)
- Laatste *Trb.* : *Trb.* 1994, 212

Uitgegeven de *negentiende* april 2012.

*De Minister van Buitenlandse Zaken,*

U. ROSENTHAL