

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2013 Nr. 256

A. TITEL

*Notawisseling houdende een verdrag tussen het Koninkrijk der
Nederlanden en het Sierra Leone Tribunaal betreffende de zetel van
het restmechanisme van het Speciaal Tribunaal van Sierra Leone;
(met bijlage)
's-Gravenhage, 19 december 2013*

B. TEKST

Nr. I

MINISTRY OF FOREIGN AFFAIRS OF THE KINGDOM OF THE
NETHERLANDS
TREATIES DIVISION

The Hague, 17 December 2013

MINBUZA-2013.351004

The Ministry of Foreign Affairs of the Kingdom of the Netherlands presents its compliments to the Residual Special Court for Sierra Leone and has the honour to propose a Headquarters Agreement between the Kingdom of the Netherlands and the Residual Special Court for Sierra Leone (hereinafter referred to as “the Parties”):

Considering that pursuant to Security Council Resolution 1315 adopted on 14 August 2000, the Special Court for Sierra Leone (hereinafter the “Special Court”) was created by the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (hereinafter the “Special Court Agreement”) signed on 16 January 2002 to investigate and prosecute those who bear the greatest responsibility for serious violations of interna-

tional humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996;

Recalling Article 23 of the Special Court Agreement, stating that the Agreement shall be terminated by agreement by the Parties upon completion of the judicial activities of the Special Court;

Whereas in anticipation of the completion of the judicial activities of the Special Court the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone (hereinafter the “The¹⁾ Agreement establishing the Residual Special Court”) signed in August 2010 establishes the Residual Special Court for Sierra Leone (hereinafter the “Residual Special Court”) to carry out the functions of the Special Court that must continue after its closure including the maintenance, preservation, and management of its archives including the archives of the Special Court;

Whereas Article 6 of the Agreement establishing the Residual Special Court provides that “the Residual Special Court shall have its principal seat in Sierra Leone”, and that “the Residual Special Court shall carry out its functions at an interim seat in the Netherlands, with a branch or sub-office in Sierra Leone for witness and victim protection and support, until such time as the Parties agree otherwise;

Considering that Article 1(3) of the Agreement establishing the Residual Special Court provides that the Residual Special Court shall continue the jurisdiction, functions, rights and obligations of the Special Court and that the Residual Special Court is established as an independent international judicial institution;

Have come to the following Agreement:

Article 1

1. “The Agreement establishing the Residual Special Court” means the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Residual Special Court for Sierra Leone signed on 11 August 2010 as may be amended in the future;

2. “The Residual Special Court” means the Residual Special Court for Sierra Leone established by the Agreement establishing the Residual Special Court;

3. “The Resolution” means Security Council Resolution 1315 adopted on 14 August 2000, requesting Secretary-General of the United Nations

¹⁾ Red.: Kennelijk dient hier éénmaal „the” gelezen te worden.

to negotiate an agreement with the Government of Sierra Leone to create the Special Court for Sierra Leone;

4. “The Statute” means the Statute of the Residual Special Court, annexed to the Agreement establishing the Residual Special Court;

5. “The Tribunal” means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by the Security Council pursuant to its resolutions 808 (1993) and 827 (1993);

6. “The Tribunal headquarters agreement” means the Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the Tribunal, signed in New York on 29 July 1994, as supplemented and may be supplemented in the future, attached in the Annex;

7. “The General Convention” means the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946;

8. “Persons performing missions for the Residual Special Court” means persons other than the ones specifically referred to in the Agreement establishing the Residual Special Court performing missions for the Residual Special Court in relation to investigations, prosecutions, judicial proceedings or other official activities of the Residual Special Court;

9. “Secretary-General” means the Secretary-General of the United Nations.

Article 2

The Residual Special Court may exercise in the Netherlands its jurisdiction and functions, in accordance with the Agreement establishing the Residual Special Court and its Statute.

Article 3

Unless otherwise provided in this Agreement, the Tribunal headquarters agreement shall apply *mutatis mutandis* to the Residual Special Court and its President, judges, Prosecutor, Registrar and staff serving with the Residual Special Court.

Article 4

1. State representatives not covered by Article 3 of this Agreement shall enjoy the same privileges and immunities as representatives of Members pursuant to Article IV of the General Convention.

2. Persons performing missions for the Residual Special Court not covered by Article 3 of this Agreement shall, to the extent necessary for their presence at the Residual Special Court in the Netherlands, enjoy the same privileges and immunities as witnesses and experts pursuant to Article XVIII of the Tribunal headquarters agreement.

Article 5

1. Privileges and Immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Residual Special Court and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Secretary-General in consultation with the President.

2. Privileges and Immunities are granted to staff serving with the Residual Special Court in the interest of the Court and not for the personal benefit of individuals themselves. The right and the duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie with the Residual Special Court Registrar.

3. In addition, the following rules shall apply to the Residual Special Court concerning waiver of privileges and immunities:

a. The privileges and immunities of personnel recruited locally and assigned to hourly rates and not otherwise covered by this Article may be waived by the Registrar.

b. The privileges and immunities of counsel, witnesses, experts and persons performing missions for the Residual Special Court may be waived by the President.

Article 6

1. The Kingdom of the Netherlands shall allow and facilitate the detention of the accused and other persons in the custody of the Residual Special Court within the detention facility made available to the Residual Special Court.

2. At the request of the Residual Special Court the Kingdom of the Netherlands shall arrest and surrender to the Residual Special Court any person, referred to in paragraph 1, escaped from the detention facility or

during transport, under the same conditions and according to the same procedures as applicable to the Tribunal.

Article 7

Within their respective legal systems, the Residual Special Court and the Netherlands shall afford one another the greatest measure of assistance in connection with the trial of persons in custody of the Residual Special Court and related trials by the Netherlands.

Article 8

1. The Residual Special Court shall not release persons in the custody of the Residual Special Court on the territory of the Kingdom of the Netherlands except with the latter's consent.

2. Where a person in the custody of the Residual Special Court will be released from the custody of the Special Court for any reason, the Special Court shall, as soon as possible, make such arrangements as it considers appropriate for his transfer, taking into account his views, to a State which is obliged to receive him, to another State which agrees to receive him, or to a State which has requested his extradition with the consent of the original surrendering State. In this case, the Kingdom of the Netherlands shall facilitate the transfer in accordance with this Agreement and related arrangements.

Article 9

The Parties to this Agreement agree to consult on further practical arrangements or agreements whenever necessary.

Article 10

1. The provisions of this Agreement shall be applied provisionally as from the date of the conclusion of this Agreement, with the exception of Articles 6, 7 and 8.

2. This Agreement shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

3. This Agreement may be amended by mutual consent of the Parties.

4. This Agreement shall cease to be in force by mutual consent of the Parties, if the interim seat of the Residual Special Court is removed from the territory of the Netherlands or if the Residual Special Court is dissolved, except for such provisions as may be applicable in connection

with the orderly termination of the operations of the Residual Special Court at its interim seat in the Netherlands and the disposition of its property therein, as well as provisions granting immunity from legal process of every kind in respect of words spoken or written or acts done in an official capacity under this Agreement.

5. This Agreement shall apply to the part of the Kingdom of the Netherlands in Europe only.

If the foregoing is acceptable to the Residual Special Court for Sierra Leone, the Ministry of Foreign Affairs of the Kingdom of the Netherlands has the honour to propose that this Note and the Note in reply of the Residual Special Court for Sierra Leone shall constitute a Headquarters Agreement between the Kingdom of the Netherlands and the Residual Special Court for Sierra Leone. The Agreement shall be applied provisionally as from the date of the Note in reply of the Residual Special Court for Sierra Leone, with the exception of Articles 6, 7 and 8, and shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

The Ministry of Foreign Affairs of the Kingdom of the Netherlands avails itself of this opportunity to renew to the Residual Special Court for Sierra Leone the assurances of its highest consideration.

*To the Residual Special Court for Sierra Leone
The Hague*

Annex

Agreement between the Kingdom of the Netherlands and the United Nations concerning the Headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, as supplemented by:

1. Exchange of Notes concluded between the Kingdom of the Netherlands and the International Criminal Tribunal for the Former Yugoslavia concerning the position of ICTY interns in the Netherlands, 15/19 February 2001;

2. Exchange of Notes concluded between the Kingdom of the Netherlands and the International Criminal Tribunal for the Former Yugoslavia concerning the addition of Article XV bis to the Agreement between the Kingdom of the Netherlands and the United Nations concerning the

Headquarters of the ICTY, regarding employment opportunities of members of the families forming part of the household of the officials of the ICTY, 20 July 2001;

3. Exchange of Notes concluded between the Kingdom of the Netherlands and the International Criminal Tribunal for the Former Yugoslavia concerning the privileges and immunities of the officials of the ICTY and their family members, 22 December 2005;

4. Exchange of Notes constituting an agreement amending the Agreement between the Kingdom of the Netherlands and the International Criminal Tribunal for the Former Yugoslavia (ICTY) concerning the position of ICTY interns in the Netherlands, 14 July 2010.

Nr. II

THE RESIDUAL SPECIAL COURT FOR SIERRA LEONE

The Hague, 19 December 2013

The Residual Special Court for Sierra Leone presents its compliments to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and has the honour to refer to the Ministry's note No. MINBUZA-2013.351004 of 17 December 2013, which reads as follows:

(Zoals in Nr. I)

The Residual Special Court for Sierra Leone has further the honour to inform the Ministry of Foreign Affairs of the Kingdom of the Netherlands that the proposals set forth in the Ministry's note are acceptable to the Residual Special Court for Sierra Leone and to confirm that the Ministry's note and this note shall constitute a Headquarters Agreement between the Kingdom of the Netherlands and the Residual Special Court for Sierra Leone. The Agreement shall be applied provisionally as from the date of this Note in reply, with the exception of Articles 6, 7 and 8, and shall enter into force on the first day of the second month after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

The Residual Special Court for Sierra Leone avails itself of this

opportunity to renew to the Ministry of Foreign Affairs of the Kingdom of the Netherlands the assurances of its highest consideration.

*To the Ministry of Foreign Affairs of the Kingdom of the Netherlands
The Hague*

D. PARLEMENT

Het in de nota's vervatte verdrag, met bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het verdrag, met bijlage, kan worden gebonden.

F. VOORLOPIGE TOEPASSING

De bepalingen van het in de nota's vervatte verdrag, met bijlage, zullen met uitzondering van de artikelen 6, 7 en 8 van het verdrag, ingevolge het gestelde in de op één na laatste alinea van nota Nr. I en II juncto artikel 10, eerste lid, vanaf 19 december 2013 voorlopig worden toegepast.

Wat betreft het Koninkrijk der Nederlanden, geldt de voorlopige toepassing alleen voor Nederland (het Europese deel).

G. INWERKINGTREDING

De bepalingen van het in de nota's vervatte verdrag, met bijlage, zullen ingevolge het gestelde in de op één na laatste alinea van nota Nr. I en II juncto artikel 10, tweede lid, in werking treden op de eerste dag van de tweede maand nadat beide partijen elkaar er schriftelijk van in kennis hebben gesteld dat aan de wettelijke vereisten voor inwerkingtreding is voldaan.

J. VERWIJZINGEN

- | | |
|---------------------|---|
| Titel | : Handvest van de Verenigde Naties;
San Francisco, 26 juni 1945 |
| Tekst | : <i>Trb.</i> 1979, 37 (gewijzigde Engelse en Franse tekst)
<i>Trb.</i> 1987, 113 (herziene vertaling) |
| Laatste <i>Trb.</i> | : <i>Trb.</i> 2012, 200 |
| | |
| Titel | : Verdrag nopens de voorrechten en immuniteiten van de
Verenigde Naties;
Londen, 13 februari 1946 |
| Tekst | : <i>Trb.</i> 1948, 224 (Engels, Frans en vertaling) |
| Laatste <i>Trb.</i> | : <i>Trb.</i> 1994, 210 |

- Titel : Resolutie 1315 (2000) van de Veiligheidsraad van de Verenigde Naties
- Tekst : *Trb.* 2004, 240, blz.1-4
- Titel : Statuut van het Internationaal Joegoslavië Tribunaal
- Tekst : *Trb.* 1993, 168. Gewijzigd bij Resoluties 1166 (1998) van 13 mei 1998, 1329 (2000) van 30 november 2000, 1411 (2002) van 17 mei 2002, 1431 (2002) van 14 augustus 2002, 1481 (2003) van 19 mei 2003, 1597 (2005) van 20 april 2005, 1660 (2006) van 28 februari 2006, 1837 (2008) van 29 september 2008 en 1877 (2009) van 7 juli 2009.
- Titel : Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Naties betreffende de zetel van het Internationaal Tribunaal voor de vervolging van personen verantwoordelijk voor ernstige schendingen van het internationaal humanitair recht op het grondgebied van het voormalig Joegoslavië sedert 1991; New York, 29 juli 1994
- Tekst : *Trb.* 1994, 189 (Engels)
- Laatste *Trb.* : *Trb.* 2012, 171
- Titel : Notawisseling houdende een verdrag tussen het Koninkrijk der Nederlanden en het Internationaal Joegoslavië Tribunaal (ICTY) inzake de positie van ICTY-stagiairs in Nederland; 's-Gravenhage, 19 februari 2001
- Tekst : *Trb.* 2001, 56 (Engels)
Trb. 2001, 84 (vertaling)
- Laatste *Trb.* : *Trb.* 2012, 172
- Titel : Notawisseling tussen de regering van het Koninkrijk der Nederlanden en het Internationaal Joegoslavië Tribunaal (ICTY) houdende een verdrag inzake de toevoeging van artikel XV bis aan het Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Naties betreffende de zetel in het ICTY van 29 juli 1994, met betrekking tot de mogelijkheid voor gezinsleden van functionarissen van het Tribunaal om in Nederland betaald werk te verrichten; 's-Gravenhage, 20 juli 2001
- Tekst : *Trb.* 2001, 148 (Engels)

- Titel : Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone;
Freetown, 16 January 2002
- Tekst : *UNTS* 2178, blz. 137-169.
- Titel : Notawisseling houdende een verdrag tussen het Koninkrijk der Nederlanden en het Internationaal Joegoslavië Tribunaal (ICTY) betreffende privileges en immuniteiten van het personeel van het Tribunaal en hun gezinsleden;
's-Gravenhage, 22 december 2005
- Tekst : *Trb.* 2005, 331 (Engels en Frans)
- Laatste *Trb.* : *Trb.* 2012, 173
- Titel : Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Residual Special Court for Sierra Leone;
Freetown, 11 augustus 2010
- Tekst : *UNTS* 50125, blz. 1-31.
- Titel : Notawisseling houdende een verdrag tussen het Koninkrijk der Nederlanden en het Sierra Leone Tribunaal inzake het transport en de opslag van de archieven van het Tribunaal;
Freetown, 14 december 2010
- Tekst : *Trb.* 2010, 332 (Engels)

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het in de nota's vervatte verdrag, met bijlage, zal zijn bekendgemaakt in Nederland (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de eenendertigste december 2013.

De Minister van Buitenlandse Zaken,

F.C.G.M. TIMMERMANS