

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1990 Nr. 150

A. TITEL

Briefwisseling tussen de Regering van het Koninkrijk der Nederlanden en de President van het "Iran-United States Claims Tribunal" inzake het toekennen van voorrechten en immuniteiten aan het Tribunaal; 's-Gravenhage, 6 en 24 september 1990

B. TEKST

Nr. I

MINISTER FOR FOREIGN AFFAIRS

The Hague, 6 September 1990

Dear Mr President,

Referring to the conversations between the Netherlands authorities and the Secretary-General of the Iran-United States Claims Tribunal concerning the privileges and immunities with respect to the functioning of the Tribunal and to the wish expressed during these conversations on behalf of the Tribunal to specify these privileges and immunities, I have the honour hereby to propose to your Excellency the following:

Article I

1. The premises of the Tribunal shall be inviolable. The Netherlands authorities may not enter them, except with the consent of the President of the Tribunal or of his designee. Such consent may, however, be assumed in case of fire or other disaster requiring prompt protective action, and only in the event that it has not been possible to obtain the express consent of the President or of his designee.

2. The Netherlands Government is under a special duty to take all appropriate steps to protect the premises of the Tribunal against any intrusion or damage and to prevent any disturbance of the peace of the Tribunal or impairment of its dignity.

3. The premises of the Tribunal, their furnishings and other property thereon shall be immune from search, requisition, attachment or execution.

4. Service of process at the premises of the Tribunal and service of any other procedural instruments relating to a cause of action against the Tribunal shall not constitute breach of inviolability.

Article 2

The archives of the Tribunal and any documents belonging to or held by it shall be inviolable. They should, when necessary, bear visible external marks of identification.

Article 3

1. Subject to the provisions of Article 4 the Tribunal, within the scope of the performance of its tasks, shall enjoy in the Netherlands immunity from jurisdiction and execution, except:

a. to the extent that the Tribunal shall have expressly waived such immunity in a particular case;

b. in the case of a civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Tribunal, or in respect of a motor traffic offence involving such a vehicle.

2. The property and assets of the Tribunal, wherever situated, shall be immune from requisition or attachment.

3. The property and assets of the Tribunal shall also be immune from administrative or provisional judicial constraint, except in so far as may be temporarily necessary in connection with the prevention of, and investigation into, accidents involving motor vehicles belonging to or operated on behalf of the Tribunal.

Article 4

1. If the Tribunal institutes or intervenes in proceedings before a court in the Netherlands, it submits, for the purpose of those proceedings, to the jurisdiction of the Netherlands courts.

2. In such cases the Tribunal cannot claim immunity from the jurisdiction of the courts in respect of a counterclaim if the counter-

claim arises from the legal relationship or the facts on which the principal claim is based.

Article 5

If the Tribunal appears before the courts in order to assert immunity, it shall not thereby be deemed to have waived immunity.

Article 6

1. The Netherlands Government shall permit and protect free communication on the part of the Tribunal for all official purposes, and notably with the Parties to the Claims Settlement Declaration.

2. The official correspondence of the Tribunal shall be inviolable. Official correspondence means all correspondence relating to the Tribunal and its functions.

Article 7

The members of the Tribunal shall be inviolable. They shall not be liable to any form of arrest or detention. The Netherlands authorities shall treat them with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 8

1. The private residence of a member of the Tribunal shall enjoy the same inviolability and protection as the premises of the Tribunal. The exception provided for by paragraph 4 of Article 1 shall be applicable *mutatis mutandis*.

2. The papers, correspondence and, except as provided for in paragraph 4 of Article 9, the property of a member of the Tribunal shall likewise enjoy inviolability.

Article 9

1. A member of the Tribunal shall enjoy immunity from the criminal jurisdiction of the Kingdom of the Netherlands.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the Kingdom of the Netherlands, except in the case of:

- a. a real action relating to private immovable property situated in the Netherlands;
- b. an action relating to succession in which a member of the Tribunal is involved as executor, administrator, heir or legatee;
- c. an action relating to any professional or commercial activity

exercised by a member of the Tribunal in the Netherlands outside his official function;

d. an action for damages arising out of an accident caused by a vehicle used or owned by a member of the Tribunal, where those damages are not recoverable from insurance.

3. A member of the Tribunal is not obliged to give evidence as a witness.

4. No measures of execution may be taken in respect of a member of the Tribunal except in the cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 2 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

Article 10

The members of the Tribunal shall be exempt in the Kingdom of the Netherlands from all personal services, from all public services of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 11

1. The Secretary-General of the Tribunal shall enjoy the privileges and immunities specified in Articles 7 to 10.

2. The other staff-members of the Tribunal shall enjoy the privileges and immunities specified in Articles 7 and 9 to 10, except that the immunity from criminal, civil and administrative jurisdiction specified in Article 9 shall not extend to acts performed outside the course of their duties.

Article 12

1. Except insofar as additional privileges and immunities may be granted by the Netherlands Government, a member of the Tribunal or a staff-member of the Tribunal who is a Netherlands national or permanently resident in the Netherlands shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his function.

2. In other respects the Kingdom of the Netherlands shall exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the Tribunal.

Article 13

Members of the family of a member of the Tribunal and of the Secretary-General forming part of his household shall, if they are not Netherlands nationals, enjoy the privileges and immunities specified in Articles 7 to 10.

Article 14

1. The purpose of the privileges and immunities provided for in the present Articles is not to benefit individuals but to ensure the unimpeded functioning of the Tribunal.

2. The Tribunal may waive the immunity from jurisdiction of a member of the Tribunal and of the Secretary-General or of any person enjoying immunity under Articles 11 to 13. Immunity shall be waived in any case where, in the opinion of the Tribunal, the immunity would impede the course of justice and waiver would not prejudice the purpose for which the immunity is accorded.

3. Waiver must always be express.

4. The initiation of proceedings by any of the persons referred to in paragraph 2 of this Article shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

5. Waiver of immunity from jurisdiction in respect of judicial proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 15

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters Netherlands territory for the purpose of performing his functions with the Tribunal or, if he is already in its territory, from the moment when his appointment is notified to the Netherlands Ministry of Foreign Affairs.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves Netherlands territory, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However in respect of acts performed by such a person in the exercise of his function, immunity shall continue to subsist.

3. In case of the death of a member of the Tribunal or of a staff-member of the Tribunal, the members of his family and his

private servants shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the Netherlands.

Article 16

In the event of the death of a member of the Tribunal or of a staff-member of the Tribunal, or of a member of his family forming part of his household, if the deceased was not a Netherlands national nor permanently resident in the Netherlands, the Kingdom of the Netherlands shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death.

Article 17

1. A member of the Tribunal, and the Secretary-General shall not practise for personal profit any professional or commercial activity in the Netherlands outside the exercise of his function in the Tribunal.

2. The staff-members of the Tribunal referred to in paragraph 2 of Article 11, not being Netherlands nationals or permanently resident in the Netherlands, and the members of the families referred to in Article 13 shall not, when they practise a professional or commercial activity for personal profit, enjoy immunity from criminal jurisdiction in respect of acts performed in the course of or in connection with the practice of such activity. However, the immunity with regard to the execution of the judgement will stand unless waived in accordance with Article 14.

Article 18

The Kingdom of the Netherlands shall, even in case of armed conflict, grant facilities to enable members of the Tribunal and staff-members of the Tribunal, other than Netherlands nationals, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. In particular it must, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 19

1. The claimants and respondents or their representatives, counsel and advocates, as well as witnesses and experts and other persons who take part in the proceedings of the Tribunal, shall enjoy immunity from legal process in respect of oral or written statements made, or

documents or other evidence submitted by them before or to the Tribunal.

2. In other respects, the Kingdom of the Netherlands shall exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of their functions with the Tribunal.

Article 20

1. The Members of the Tribunal and the Secretary-General shall be exempt from social security provisions in force in the Netherlands.

2. In the event that the Tribunal shall have established its own social security system offering coverage comparable to the coverage under Netherlands legislation, the Tribunal and its employees shall be exempt from social security provisions in force in the Netherlands, with retroactive effect to 18 May 1981.

3. The provisions of par. 1 and 2 shall apply *mutatis mutandis* to members of the family forming part of the households of the persons mentioned in those paragraphs, unless they are employed or self-employed in the Netherlands or receive Netherlands social security benefits.

If the foregoing meets with the approval of Your Excellency I have the honour further to propose that this letter and your letter in reply shall constitute an agreement between the Kingdom of the Netherlands and the Iran-United States Claims Tribunal which will enter into force on the date of receipt by the Ministry of Foreign Affairs of your Excellency's letter accepting the above.

Sincerely Yours,

(sd.) H. VAN DEN BROEK

*His Excellency
Dr. Robert Briner
President of the
Iran-United States Claims Tribunal
at The Hague*

Nr. II

Iran-United States Claims Tribunal

Parkweg 13 – 2585 JH The Hague
The Netherlands
Telephone: (070) 520064

The President

24 September 1990

Dear Mr. Minister,

I have the honour to refer to Your Excellency's letter dated 6 September 1990 which reads as follows:

(Zoals in Nr. I)

On behalf of the Tribunal, I hereby confirm approval of the terms of Your Excellency's letter set forth above, and accordingly agree that that letter and this reply shall constitute an agreement between the Iran-United States Claims Tribunal and the Kingdom of the Netherlands which will enter into force on the date of receipt of this reply by the Ministry of Foreign Affairs.

Yours sincerely,

(sd.) ROBERT BRINER,

Robert Briner

President

*His Excellency
Mr. H. van den Broek
Minister for Foreign Affairs
of the Kingdom of the Netherlands
The Hague*

D. PARLEMENT

De in de brieven vervatte overeenkomst behoeft niet de goedkeuring van de Staten-Generaal ingevolge additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet, junctis artikel 62, eerste lid,

onderdeel a, van de Grondwet naar de tekst van 1972 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: "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.

Zie voor de behandeling in de Staten-Generaal: Bijl. Hand. II 1947/48-629; Hand. II 1947/48, blz. 636; Bijl. Hand. I 1947/48, nr. 30; Hand. I 1947/48, blz. 48.

G. INWERKINGTREDING

De bepalingen van de in de brieven vervatte overeenkomst zijn ingevolge het in de laatste alinea's van de brieven gestelde in werking getreden op 24 september 1990.

Wat het Koninkrijk der Nederlanden betreft, geldt de overeenkomst alleen voor Nederland.

J. GEGEVENS

Het "Iran-United States Claims Tribunal" is ingesteld bij artikel II van de Verklaring van de Regering van de Democratische Volksrepubliek Algerije d.d. 19 januari 1981. De tekst van de Verklaring is afgedrukt in Trb. 1981, 155, blz. 11 e.v.

Uitgegeven de *zesentwintigste* oktober 1990.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK