

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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A. 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*

B. TEKST

**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**

The Government of the Kingdom of the Netherlands (hereinafter called the Government), on the one hand, and the International Organization for Migration (IOM) (hereinafter called the Organization), on the other hand,

Bearing in mind that Article 27 of the Constitution of the Organization confers juridical personality on the Organization and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purpose, and that the Organization and its staff should enjoy privileges and immunities as provided for in Article 28 of the Constitution,

Have agreed on the following provisions:

Article 1

1. "Official activities of the Organization" are those undertaken pursuant to the Constitution of the Organization, including its administrative activities.

2. "Staff member" means any person, appointed or recruited for

employment with the Organization in the Netherlands to carry out its official activities.

#### Article 2

The Organization shall possess juridical personality. It shall have the capacity:

- a. to contract;
- b. to acquire and dispose of immovable and movable property;
- c. to receive and disburse private and public funds;
- d. to institute legal proceedings.

#### Article 3

The archives of the Organization shall be inviolable. The term "archives" includes all records, correspondence, documents, manuscripts, photographs, films and recordings belonging to or held by the Organization.

#### Article 4

The premises of the Mission of the Organization shall be inviolable subject to the provisions of Article 16 of this Agreement. Any person authorized to enter any place under any legal provision or on the strength of the law as described in the said Article 16 shall not exercise that authority in respect of the premises of the Mission of the Organization unless permission to do so has been given by or on behalf of the Chief of Mission. Such permission shall be assumed in case of fire or other disaster requiring prompt protective action. In the other cases, the Chief of Mission or the person acting on his behalf shall give permission if it is possible to do so without prejudicing the interests of the Organization.

#### Article 5

1. The Organization shall have immunity from jurisdiction and immunity from execution except:

- a. to the extent that the Organization shall have expressly waived such immunities in a particular case;
- b. in respect of a civil action by a third party for damage arising from an accident caused by a motor vehicle belonging to or operated on behalf of the Organization or in respect of a motor traffic offence involving such a vehicle;
- c. in respect of an enforcement of an arbitration award made under either Article 17 or Article 18 of this Agreement;
- d. in the event of the attachment, pursuant to a decision by the

judicial authorities, of the salaries and emoluments owed by the Organization to a staff member.

2. The Organization's property and assets wherever situated shall be immune from any form of requisition, confiscation, expropriation and sequestration.

They shall also be immune from any form of administrative or provisional judicial constraint, except insofar 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 Organization.

#### Article 6

1. Within the scope of its official activities, the Organization and its assets, income and other property shall be exempt from all direct taxes. Direct taxes include income tax, capital tax, corporation tax and direct taxes levied by local authorities.

2. The Organization shall, on application, be granted exemption from motor vehicle tax in respect of its motor vehicles used for its official activities.

3. The Organization shall be accorded a refund of value added tax paid on the supply of goods or services of considerable value – with the exception of motor vehicles – necessary for the official activities of the Organization.

In this connection, it is envisaged that claims for refund will be made only in respect of goods or services supplied on a recurring basis or involving considerable expenditure such as the furnishing of the premises of the Mission of the Organization. The Organization shall be accorded a refund of the excise duty element included in the price of spirits and hydrocarbons such as fuel oils and motor fuels purchased by the Organization and necessary for its official activities.

4. Goods, including motor vehicles whose import or export by the Organization is necessary for the exercise of its official activities shall be exempt from all import duties and taxes and from all prohibitions and restrictions on import or export.

5. The provisions of the preceding section shall not apply to taxes and duties that are no more than charges for public utility services.

6. Goods acquired or imported under the preceding sections shall not be sold, given away or otherwise disposed of except in accordance with conditions agreed with the Government.

7. No exemption shall be granted under the preceding sections, in respect of goods purchased or imported, or services provided, for the personal benefit of the staffmembers of the Organization.

## Article 7

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 8

1. For its official communications the Organization shall enjoy treatment not less favourable than that accorded by the Netherlands to other international organizations.

2. No censorship shall be applied to official communications of the Organization by whatever means of communications.

## Article 9

The circulation of publications and other information material sent by or to the Organization shall not be restricted in any way.

## Article 10

The Director General and the Deputy Director General of the Organization shall enjoy in the Netherlands the privileges and immunities to which a diplomatic agent is entitled, unless in either case he is a Netherlands national. In the latter case, he shall enjoy the privileges and immunities of Article 11 a and b.

## Article 11

The staff members of the Organization:

a. shall have (even after they have left the service of the Organization) immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken. This immunity shall not, however, apply in the case of a motor traffic offence committed by a staff member nor in the case of damage caused by a motor vehicle belonging to or driven by him;

b. shall enjoy inviolability for all their official papers and documents.

## Article 12

1. The Chief of Mission shall be exempt from Netherlands income tax on his salary and emoluments paid by the Organization. In the case of disability to function or absence for more than three months the exemption shall apply to the deputy Chief of Mission. In the event that

the Organization operated a system for the payment of pensions and annuities to its former Chief of Mission and his deputy and their dependents, the provisions of this section shall not apply to such pensions and annuities.

2. In case the Organization decides to appoint as staff members, persons who are not residents of the Netherlands, the Organization may consult with the Government on the taxation of the salaries of such staff members.

### Article 13

1. The Organization and the staff members as indicated in Article 12, section 1, to whom the Organization's social security scheme applies, shall be exempted from all compulsory contributions to the Netherlands social security regulations. Consequently they shall not be covered against the risks described in the Netherlands social security regulations.

2. The provisions of section 1 shall apply mutatis mutandis to the spouse, children and other relatives belonging to the household of the persons referred to in section 1, unless they are employed or self-employed in the Netherlands or receive Netherlands social security benefit.

3. In case the Organization decides to appoint as staff members, persons who are not residents of the Netherlands, the Organization may consult with the Government on the social security status of such staff members.

### Article 14

The staff members of the Organization who do not hold the Netherlands nationality and who are not permanent residents of the Netherlands:

a. shall enjoy exemption from all measures restricting immigration and from aliens registration formalities. Members of their families forming part of their household shall enjoy the same facilities;

b. shall not require a work permit;

c. shall be exempt from all obligations in respect of military service;

d. shall be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;

e. shall, in accordance with the regulations in force, have relief from import duties and taxes (except payments for services) in respect of their furniture and personal effects, including one motor vehicle, at the time of first taking up their post in the Netherlands and the right on

the termination of their function in the Netherlands to export with relief from duties and taxes their furniture and personal effects, subject, in both cases, to the conditions agreed with the Government.

#### Article 15

1. 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.

2. The Director General has the right and the duty to waive such immunities when he considers that such immunities are preventing the carrying out of justice and when it is possible to dispense with the immunities without prejudicing the interests of the Organization.

3. The Council of the Organization may waive the immunities of the Director General and the Deputy Director General. If their immunities are not waived the Council shall, at the instance of the Government, give serious consideration to submitting the dispute concerned to an international arbitration tribunal.

#### Article 16

The Organization shall cooperate at all times with the appropriate authorities in order to facilitate the proper administration of justice, to ensure the observance of police regulations and regulations concerning the handling of inflammable material, public health, labour inspection and other similar national legislation, and to prevent any abuse of the privileges and immunities and facilities provided for in this Agreement. 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

Where the Organization enters into contracts (other than contracts concluded in accordance with staff regulations) the Organization shall include an arbitration clause whereby any disputes arising out of the interpretation or execution of the contract may at the request of either party be submitted to private arbitration.

#### Article 18

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

- a. arising out of damage caused by the Organization ;
- b. involving any other non-contractual responsibility of the Organization ;
- c. involving a staff member who can claim immunity from jurisdiction under this Agreement, if this immunity is not waived.

#### Article 19

1. The Organization shall from time to time send to the Government a list of all staff members of the Mission of the Organization in the Netherlands indicating in each case whether or not the individual is a Netherlands national. The Organization may inform the Government of the appointment of a new staff member individually for addition to the list.

2. The personal identity card which shall be issued by the Organization, stating names, date and place of birth, nationality, number of passport (aliens only) and bearing photograph and signature, shall be authenticated by the Ministry of Foreign Affairs.

#### Article 20

Any dispute between the Government and the Organization concerning the interpretation or application of this Agreement which is not settled by negotiation shall be submitted for decision to a tribunal of three arbitrators of whom the first shall be appointed by the Government, the second by the Organization, and a presiding arbitrator by the President of the International Court of Justice, unless in any specific case the Parties agree to resort to a different mode of settlement. Unless the Government and the Organization decide otherwise, the tribunal shall determine its own procedure. The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Parties to the dispute.

#### Article 21

This Agreement shall enter into force on the day of its signature.

#### Article 22

The provisions of this Agreement can be modified or revised at any time by mutual consent of the Parties.  
Negotiations thereto shall be conducted at the request of either Party.

#### Article 23

The 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 the Agreement.

Article 24

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 the 1 of May 1990 in duplicate, in the English language.

*For the Government of the Kingdom of the Netherlands*

(sd.) B. DE VRIES

*For the International Organization for Migration*

(sd.) JAMES N. PURCELL, Jr.

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#### D. PARLEMENT

De 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 I 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 Overeenkomst zijn ingevolge artikel 21 op 1 mei 1990 in werking getreden.

Wat het Koninkrijk der Nederlanden betreft, geldt de Overeenkomst ingevolge artikel 24 alleen voor Nederland.

#### J. GEGEVENS

De Internationale Organisatie voor Migratie is voortgekomen uit de Intergouvernementele Commissie voor Europese Migratie. Van het op 19 oktober 1953 te Venetië tot stand gekomen en op 20 mei 1987 gewijzigde Statuut van de Organisatie, naar welk Statuut onder meer in de preambule tot de onderhavige Overeenkomst wordt verwezen, zijn tekst en vertaling zoals deze thans luiden geplaatst in *Trb.* 1988, 21; zie ook *Trb.* 1990, 1.

Van het op 13 februari 1946 te Londen tot stand gekomen Verdrag nopens de voorrechten en immuniteiten van de Verenigde Naties, naar welk Verdrag wordt verwezen in rubriek D hierboven zijn tekst en vertaling bekendgemaakt in Stb. I 224. Zie ook, laatstelijk, *Trb.* 1979, 35.

Van het op 26 juni 1945 te San Francisco tot stand gekomen Statuut van het Internationaal Gerechtshof, naar welk Statuut in artikel XXI van de onderhavige Overeenkomst wordt verwezen, zijn de Engelse en

de Franse tekst geplaatst in *Trb.* 1971, 55 en is de herziene vertaling in het Nederlands geplaatst in *Trb.* 1987, 114.

Bij gelegenheid van de ondertekening van de onderhavige Overeenkomst is nog de volgende overeenstemming ondertekend:

The Minister of Social Affairs and Employment and the Director-General of the International Organization for Migration, taking into account the provision in article 13 paragraph 3 of 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, have agreed that this provision has to be further clarified. This provision shall be subject of discussions between delegations on behalf of the afore mentioned.

*Minister of Social Affairs and Employment*

(sd.) B. DE VRIES

*Director General of the International Organization for Migration*

(sd.) JAMES N. PURCELL, Jr.

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Uitgegeven de achtste juni 1990.

*De Minister van Buitenlandse Zaken a.i.,*

R. F. M. LUBBERS