

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1991 Nr. 96

A. TITEL

*Zetelovereenkomst tussen het Koninkrijk der Nederlanden en de
Internationale Nikkel Studie Groep;
's-Gravenhage, 28 mei 1991*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the
International Nickel Study Group concerning the
Headquarters of the Group**

The Government of the Kingdom of the Netherlands
and

The International Nickel Study Group,

Bearing in mind that the terms of reference of the International Nickel Study Group as adopted on 2 May 1986 by the United Nations Conference on Nickel, 1985, contains provisions regarding the legal status of the Group in the host country.

Having regard to the decision of the Inaugural Meeting of the International Nickel Study Group to establish the Headquarters of the Group in the Kingdom of the Netherlands in accordance with paragraph 7 of its terms of reference;

Taking into account that the establishment of the Headquarters of the Group in the territory of the Kingdom of the Netherlands makes further provisions desirable,

Have agreed as follows:

Article 1

Definitions

In this Agreement:

a. "the terms of reference of 1986" means the terms of reference of the International Nickel Study Group as adopted on 2 May 1986 by the United Nations Conference on Nickel, 1985;

b. "the Group" means the International Nickel Study Group;

c. "the Government" means the Government of the Kingdom of the Netherlands;

d. "staff members" means persons appointed or recruited for employment by the Group for the carrying out of its official activities, with the exclusion of persons in domestic service of the Group and persons recruited locally and assigned to hourly rates of pay;

e. "representatives of members" means heads of delegations and alternates of members of the Group, as well as government and industry advisers in their capacity of members of delegation;

f. "official activities of the Group" means those activities undertaken pursuant to the terms of reference of 1986, including the Group's administrative activities;

g. "premises of the Group" means buildings, parts of buildings, as well as conference facilities in use outside of the buildings normally occupied by the Group for the fulfilment of its official functions.

Article 2

Legal status

The Group shall have legal personality in the Netherlands. It shall, in particular, have the capacity to enter into contracts and to acquire and to dispose of movable and immovable property in the Netherlands, and to institute legal proceedings.

Article 3

Inviolability of the premises

The premises of the Group shall be inviolable. Any person authorized to enter any place under any legal provision or on the strength of the law shall not exercise that authority in respect of the premises of the Group unless permission to do so has been given by or on behalf of the Secretary-General. Such permission may, however, be assumed in case of fire or other emergencies requiring prompt protective action.

In other cases the Secretary-General or the person acting on his behalf will give serious consideration to a request for permission from

the Netherlands authorities to enter the premises, without prejudice to the interests of the Group.

Article 4

Inviolability of the archives

The archives of the Group, wherever located, shall be inviolable.

Inviolability of the archives shall apply to all records, correspondence, documents, manuscripts, photographs, films, recordings and computer data and computer files belonging to or held by the Group.

Article 5

Immunity from juridical proceedings

Without prejudice to the provisions of paragraph 13 of the terms of reference of 1986, the Group, its property and assets, wherever located and by whomsoever held, shall enjoy the same immunity from legal process as foreign states, their properties and assets in the Netherlands enjoy in accordance with international law.

In any event, immunity shall not extend to 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 Group or to a motor-traffic offence involving such a vehicle.

Article 6

Communications

1. The Group 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 have the same privileges and immunities as diplomatic couriers and bags.

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

Article 7

Publications

The circulation of publications and other information material sent by or to the Group, in the fulfilment of its purposes, shall not be restricted in any way.

Article 8

Exemption from taxes and duties

1. In respect of taxes and duties the Group shall:
 - a. enjoy exemption, within the scope of its official activities, from all direct taxes including income tax, capital tax, corporation tax and direct taxes levied by local authorities;
 - b. enjoy exemption from stock-exchange tax, insurance tax and tax on capital duty;
 - c. be granted exemption from motor-vehicle tax in respect of its motor-vehicles used for its official activities. In order to apply this exemption the Group shall file a request for each purchase to which this exemption is applicable;
 - d. be accorded a refund of Value Added Tax (BTW) paid on the supply of goods or services of substantial value, with the exception of motor-vehicles, necessary for its official activities. In this connection it is envisaged that claims for refund will be made only in respect of goods and services supplied on a recurring basis or involving considerable expenditure;
 - e. 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 Group and necessary for its official activities;
 - f. enjoy exemption from all import duties and taxes in respect of goods, including motor-vehicles, whose import or export by the Group is necessary for the exercise of its official activities;
 - g. enjoy exemption from the real property-transfer tax for the obtaining of the accommodation of its Headquarters, provided that the activities performed from this real property are within the scope of the official function of the Group.

2. The provisions of paragraph 1 shall not apply to taxes and duties which are considered to be charges for public utility services.

3. Goods acquired or imported under paragraph 1 of this article shall not be sold, given away, or otherwise disposed of, except in accordance with conditions agreed upon with the Government.

Article 9

Freedom of assets from restriction

Without being restricted by financial controls, regulations or moratoria of any kind the Group may:

- a. hold funds, gold or currency of any kind and operate accounts in any currency;
- b. freely transfer its funds, gold or currency to or from the

Netherlands or within the Netherlands and convert any currency held by it into any other currency.

Article 10

Representatives of members

The representatives of members of the Group:

a. shall be immune from legal process with respect to acts performed by them in their official capacity, including words written or spoken, even after the termination of their mission. This immunity, however, shall not apply in case of a civil action by a third party for damage arising from an accident caused by a motor-vehicle belonging to or driven by him or her.

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

c. shall be granted visa free from charges.

Article 11

Secretary-General

1. The Secretary-General shall, together with members of the family forming part of his household, not being servants, enjoy the privileges and immunities to which a Head of a diplomatic Mission in the Kingdom of the Netherlands is entitled, unless they are either a Netherlands national or a permanent resident of the Netherlands.

2. The Secretary-General shall not practise for personal profit any professional or commercial activity in the Netherlands outside the exercise of his function with the Group.

3. The members of the family referred to in paragraph 1 of this article shall not, when they practise a professional or commercial activity for personal profit, enjoy immunity from administrative and civil jurisdiction in respect of acts performed in the course of or in connection with the practice of such activities.

However the immunity with regard to the execution of the judgement will stand unless waived in accordance with paragraph 2 of article 15.

4. With regard to activities referred to in paragraph 3 of this article the persons concerned shall neither enjoy any fiscal privilege nor exemption from the Netherlands social security provisions.

5. Except insofar as additional immunities may be granted by the Netherlands Government, the Secretary-General, 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 functions.

Article 12

Staff members

1. The staff members of the Group:
 - a. shall, even after they have left the service of the Group, be immune from legal process with respect to acts performed by them in their official capacity, including words written or spoken.

This immunity shall, however, not apply in case of a motor-traffic offence committed by a staff member nor in the case of a civil action by a third party for damage arising from an accident caused by a motor-vehicle belonging to or driven by him or her;
 - b. shall enjoy inviolability of all their official papers and documents;
 - c. shall, subject to the conditions and following the procedure laid down by the Group and agreed with the Government, be subject to a tax, for the benefit of the Group, on salaries and emoluments paid by the Group. From the date on which this tax is applied such salaries and emoluments shall be exempt from Netherlands income tax;
 - d. in the event that the Group operates a system for the payment of pensions and annuities to its former staff members and their dependants, paragraph c, shall not apply to such pensions and annuities.
2. Moreover, the staff members who do not have the Netherlands nationality:
 - a. shall enjoy exemption from all measures restricting immigration, from aliens registration formalities and from all obligations in respect of military service. Members of their families forming part of their household shall enjoy the same facilities;
 - b. shall be given, together with members of their families forming part of their household, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic Missions;
 - c. shall not require a work permit as regards their official functions with the Group;
 - d. shall, in accordance with the regulations in force, have relief from duties and taxes (except payments for services) in respect of import 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 13

Experts

Experts (other than staff members) in the exercise of their functions in connection with the Group or in carrying out missions for the

Group shall enjoy the following privileges and immunities to the extent that they are necessary for the carrying out of their functions, including journeys made in carrying out their functions and in the course of such missions:

a. even after they have ceased to be employed by the Group immunity from jurisdiction in respect of acts done by them in the exercise of their functions, including words written or spoken, except in the case of a motor-traffic offence committed by an expert or in the case of damage caused by a motor-vehicle belonging to or driven by him;

b. inviolability for all their official papers and documents; and

c. shall be granted visa free from charges.

Article 14

Notification

1. The Group shall notify the Ministry of Foreign Affairs of:

a. the appointment of a Secretary-General and staff members by the Group, their arrival and their final departure or the termination of their functions with the Group;

b. the arrival and final departure of members of the family forming part of the household of the persons referred to under a, and, where appropriate, the fact that a person becomes or ceases to be a member of the family;

2. The privileges and immunities granted to the respective categories of persons referred to under paragraph 1 of this article will be implemented upon arrival of such persons and will be repealed two weeks after notification to the Ministry that either the person has terminated his or her function with the Group, or has ceased to be a member of the family of a person referred to under paragraph 1, sub a, or has left the employ of such a person. In any case, privileges and immunities will be repealed immediately after final departure of the persons concerned.

Article 15

Social security

1. The Secretary-General shall be exempt from social security provisions in force in the Netherlands, unless he is not covered by the social security scheme of the Group.

2. In the event that the Group shall have established its own social security system or shall have adhered to a social security scheme in both cases offering coverage comparable to the coverage under Netherlands legislation, the Group and its employees to whom the

aforementioned scheme applies, shall be exempt from social security provisions in force in the Netherlands, unless the employee takes up a gainful activity in the Netherlands.

Article 16

General provisions

1. The immunities, and privileges provided for in this Agreement are granted in the interest of the Group and not for the personal benefit of the individuals themselves. It is the duty of the Group and all persons enjoying such immunities and privileges to observe in all other respects the laws and regulations of the Netherlands.

2. The Secretary-General shall have the right and the duty to waive the immunity of the Group and any staff member, in cases where the immunity would impede the course of justice and can be waived without prejudice to the interests of the Group. In respect of the Secretary-General of the Group the Group has a similar right and duty.

3. The Group shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice and prevent the occurrence of any abuse in connection with the privileges and immunities in the Agreement.

4. This Agreement shall be implemented and interpreted in the light of its primary purpose of enabling the Group to discharge fully and efficiently its functions.

Article 17

Implementation, modification and revision

At the request of either Party, consultations shall take place with respect to the implementation, modification or revision of this Agreement.

Any understanding, modification or revision may be given effect by an exchange of notes between the Government and the Secretary-General.

Article 18

Termination

This Agreement will be terminated in the event of the Headquarters being moved from the territory of the Netherlands. The provisions of this Agreement relevant in connection with the orderly termination of

the operations of the Group in the Netherlands and the disposal of its property shall, however, remain applicable as long as necessary, but no longer than six months after notification to the Government that the Group will terminate its operation in the Netherlands.

Article 19

Entry into force

1. This Agreement shall enter into force the day following the day that both Parties have notified each other in writing that the required procedures to that end have been completed.

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

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE at The Hague on 28 May 1991 in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands,

(sd.) Y. VAN ROOY

For the International Nickel Study Group,

(sd.) GLENN WITTUR

D. PARLEMENT

Op grond van artikel 3 van de Wet van 24 december 1947 (*Stb.* H 452), houdende goedkeuring van de toetreding tot het door 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), junctis additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet en artikel 62, eerste lid, onder a, van de Grondwet naar de tekst van 1972, behoeft de onderhavige Overeenkomst niet de goedkeuring der Staten-Generaal alvorens in werking te kunnen treden.

Dit artikel 3 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. VAN BOETZELAER, de Minister van Justitie J.H. VAN MAARSEVEEEN, 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 zullen ingevolge artikel 19, eerste lid, in werking treden op de dag volgende op de dag dat beide Partijen elkaar schriftelijk ervan in kennis hebben gesteld, dat de daartoe vereiste procedures zijn voltooid.

Wat het Koninkrijk der Nederlanden betreft, zal de Overeenkomst ingevolge artikel 19, tweede lid, alleen voor Nederland gelden.

J. GEGEVENS

De Internationale Nikkel Studie Groep is ingesteld bij het op 2 mei 1986 te New York tot stand gekomen Statuut. Tekst en vertaling van het Statuut zijn geplaatst in *Trb.* 1987, 29. Zie ook *Trb.* 1991, 50.

Uitgegeven de *zevenentwintigste* juni 1991.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK