

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1993 Nr. 155

A. TITEL

Briefwisseling tussen de Regering van het Koninkrijk der Nederlanden en de Verenigde Naties houdende een verdrag inzake een studiereis van het Comité voor Menselijke Nederzettingen in Nederland van 24-30 september 1993; Genève, 8 juni t/m 17 september 1993

B. TEKST

Nr. I

UNITED NATIONS OFFICE
AT GENEVA

The Director-General

G/LE-311/21 [NETHS]

8 June 1993

Sir,

I have the honour to give you below the text of arrangements between the United Nations and the Government of the Netherlands (hereinafter referred to as "the Government") in connection with the Study Tour of the Committee on Human Settlements, Principal Subsidiary Body of the Economic Commission for Europe, to be held, at the invitation of the Government, in the Netherlands, from 24 to 30 September 1993.

**"ARRANGEMENTS BETWEEN THE UNITED NATIONS
AND THE GOVERNMENT OF THE NETHERLANDS IN
CONNECTION WITH THE STUDY TOUR OF THE COM-
MITTEE ON HUMAN SETTLEMENTS, PRINCIPAL SUB-**

SIDIARY BODY OF THE ECONOMIC COMMISSION
FOR EUROPE, TO BE HELD IN THE NETHERLANDS,
FROM 24 TO 30 SEPTEMBER 1993.

1. Participants in the Study Tour will be invited by the Executive Secretary of the United Nations Economic Commission for Europe in accordance with the rules of procedure of the Commission and its subsidiary organs.
2. The Government will be responsible for dealing with any action, claim or other demand against the United Nations arising out of (i) injury to person or damage to property in conference or office premises provided for the Study Tour; (ii) the transportation provided by the Government; and (iii) the employment for the Study Tour of personnel provided or arranged by the Government; and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except in cases of gross negligence or wilful misconduct of these officials and persons.
3. The Government may, if it so wishes, invite officials of the Organization to take part in the Study Tour, provided it bears all the costs arising from such participation.
4. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Netherlands is a party, shall be applicable to the Study Tour, in particular:
 - a) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by article VI of the Convention. Officials of the United Nations participating in or performing functions in connection with the Study Tour shall enjoy the privileges and immunities provided under articles V and VII of the Convention;
 - b) Without prejudice to the provisions of the Convention on the Privileges and Immunities of the United Nations, all participants and persons performing functions in connection with the Study Tour shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Study Tour;
 - c) Personnel provided by the Government pursuant to this Agreement shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the Study Tour;
 - d) All participants and all persons performing functions in connection with the Study Tour shall have the right of unimpeded entry into and exit from the Netherlands. Visas and entry permits, where required, shall be granted promptly and free of charge.
5. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provi-

sion of the Convention on the Privileges and Immunities of the United Nations or of any other agreement applicable to both parties, shall be settled by negotiation or in accordance with any other procedure agreed upon by the parties."

* * * * *

I have the honour to propose that this letter and your affirmative answer shall constitute an agreement between the United Nations and the Government of the Netherlands which shall enter into force on the date of your reply and shall remain in force for the duration of the Study Tour.

Accept, Sir, the assurances of my highest consideration.

(sd) V. PETROVSKY

Vladimir Petrovsky

*His Excellency
 Ambassador Johan Boddens Hosang
 Permanent Representative of the
 Netherlands to the Office of the
 United Nations at Geneva
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Nr. II

PERMANENT MISSION OF THE KINGDOM
 OF THE NETHERLANDS TO THE OFFICE OF THE
 UNITED NATIONS AND TO OTHER
 INTERNATIONAL ORGANISATIONS AT GENEVA

No. 3598

Geneva, 11 June 1993

Dear Mr Lopez Polo,

Further to your draft text G/LE-311/21 (Neths) dated 19 March 1993, I have the honour to inform you that the Netherlands Government can agree to the proposed text of arrangement on the Study Tour of the Committee on Human Settlements of the Economic Commission for Europe, to be held in the Netherlands from 24-30 September, with the following amendments:

2. Insert after (ii); "injury to person of damage to property in".
Delete "the".

The sentence "except in cases of gross negligence of wilful misconduct of these officials and persons" is to be replaced by "unless these damages and injuries were caused by gross negligence or intentionally by the personnel of the United Nations".

4. The Convention of 13 February 1946 on the Privileges and Immunities of the United Nations, to which the Netherlands is a party, shall be applicable to the Study Tour, in particular:

a) The participants shall enjoy the privileges and immunities accorded to experts on mission for the United Nations by Article VI of the Convention.

b) Officials of the United Nations participating in or performing functions in connection with the Study Tour shall enjoy the privileges and immunities provided under Articles V and VII of the Convention.

Looking forward to your reaction, I remain.

Sincerely Yours,

(sd.) S. J. H. SMITS

Simon J. H. Smits
First Secretary

*Mr Lopez Polo
Director, Environment
& Human Settlements Division
Economic Commission for Europe
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Nr. III

UNITED NATIONS OFFICE AT GENEVA
Palais des Nations
CH – 1211 Genève 10

Geneva, 6 August 1993

Dear Mr. Smits,

Reference is made to your letter dated 11 June, addressed to Mr. Lopez-Polo, Director, Environment and Human Settlements

Division, Economic Commission for Europe, concerning proposed arrangements relating to a Study Tour of the Committee on Human Settlements of the Economic Commission for Europe, to be held in the Netherlands from 24 to 30 September 1993.

The amendments which you have proposed to the text contained in the letter which the Director-General of the United Nations Office at Geneva addressed on 8 June 1993, to the Permanent Representative of the Netherlands, had to be transmitted to the Office of Legal Affairs (OLA) at Headquarters for guidance, because they represent deviations from the standard text used in United Nations Conference Agreements. Having received the observations from the OLA, I wish to inform you as follows:

1. Paragraph 2: You have proposed to replace in the liability clause the words "except in cases of gross negligence or wilful misconduct of these officials and persons" with the expression "unless these damages and injuries were caused by negligence or intentionally by the personnel of the United Nations". As the expression "gross negligence or wilful misconduct" is a standard one, which is widely used in United Nations Conference Agreements, the United Nations would prefer to maintain this wording which could be specified to read "...except where it is agreed by the parties that the claim or liability arises from gross negligence or wilful misconduct of the above mentioned individuals".

2. Paragraph 4: You have proposed to modify this paragraph by subdividing it into three new paragraphs 4, 5 and 6. Thereby the original sub-paragraph 4 (c) providing for functional immunity from legal process for local personnel would be deleted. According to the archives of the LLO in Geneva, the Government of the Netherlands has regularly accepted that clause since 1990, most recently for the Ad Hoc Meeting on Environmental Rights and Obligations of the Economic Commission for Europe, held at The Hague from 1 to 5 July 1991 (see letter dated 27 June 1991 from the Permanent Representative of the Netherlands). As the clause in question is again a standard provision used in United Nations Conference Agreements, the United Nations would prefer to maintain it.

I should like, however, to seize this opportunity to propose a different settlement of disputes clause, i.e. to replace paragraph 5 by the following text which is already contained in an exchange of letters with the Netherlands concerning a United Nations Meeting on Petroleum Exploration Strategies in Developing Countries, held in The Hague in March 1991 (copy enclosed for ease of reference).

"5. Any dispute concerning the interpretation or implementation of this Agreement, except for a dispute subject to the appropriate provisions of the Convention on the Privileges and Immunities of the United Nations or of any other applicable agreement shall, unless the

parties otherwise agree, be submitted to a tribunal of three arbitrators, one of whom shall be appointed by the Secretary-General of the United Nations, one by the Government, and the third, who shall be the Chairman, by the other two arbitrators. If either party does not appoint an arbitrator within three months of the other party having notified the names of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint the chairman, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except if otherwise agreed by the parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the parties, and take all decisions by a two-thirds majority. Its decisions on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them".

Hoping that the proposals contained in this letter are acceptable to the Government of the Netherlands, I remain,

Yours sincerely,
(s.d.) M. Noll-Wagenfeld
Meike Noll-Wagenfeld
Senior Legal Officer

*Mr. S. Smits
First Secretary
Economic and Environmental Affairs
Permanent Mission of the Kingdom of the
Netherlands to the United Nations Office
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Case postale 276
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Nr. IV

PERMANENT MISSION OF THE KINGDOM
OF THE NETHERLANDS TO THE OFFICE OF THE
UNITED NATIONS AND TO OTHER
INTERNATIONAL ORGANISATIONS AT GENEVA

No. mil gev-0083 93

Geneva, 30 August 1993

Dear Mrs. Noll-Wagenfeld,

With reference to your letter of 6 August 1993, addressed to my colleague Simon Smits, I wish to inform you as follows:

Paragraph 2: The text we proposed has been used in recently concluded similar agreements with UN organisations. We are, however, prepared to accept the following text: "... except in cases of gross negligence or wilful misconduct by personnel of the United Nations".

Paragraph 4: We prefer to delete the original subparagraph 4 (c), as we consider it neither necessary nor desirable that immunity from legal process be accorded to locally hired personnel (e.g. drivers) in respect of a study tour. For the sake of completeness we inform you that we have not accepted the clause in question in recently concluded similar agreements.

Paragraph 5: We agree to your proposal for the text of the "settlement of disputes".

Looking forward to your reaction, I remain.

Sincerely Yours,

(sd.) M. VAN DER KOLK

Marcel van der Kolk
First Secretary

Mrs M Noll-Wagenfeld
Senior Legal Officer
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8-14, avenue de la Paix
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Nr. V

UNITED NATIONS OFFICE AT GENEVA
Legal Liaison Office
Palais des Nations
CH - 1211 Genève 10

Geneva, 1 September 1993

Dear Mr. van der Kolk,

This is to acknowledge the receipt of your letter dated 30 August 1993, relating to a Study Tour of the Committee on Human Settlements of the Economic Commission for Europe, to be held in the Netherlands from 24 to 30 September 1993.

The United Nations can accept your proposal concerning paragraph 2 of the letter dated 8 June 1993, which the Director-General addressed to the Permanent Representative of the Netherlands, reading as follows (as amended):

"... and the Government shall hold the United Nations and its personnel harmless in respect of any such action, claim or other demand, except in cases of gross negligence or wilful misconduct by personnel of the United Nations."

As far as your proposal to delete subparagraph (c) of paragraph 4 of the letter referred to above, is concerned, I can inform you that the Office of Legal Affairs has accepted that deletion on an exceptional basis.

I note that you agree to the text of the settlement of disputes clause proposed in my letter of 6 August which will replace therefore the text of paragraph 5 of the Director-General's letter.

As we now seem to agree on a common text, I suggest that the Permanent Representative of the Netherlands replies to the letter of the Director-General, repeating the proposed (and already accepted) amendments, so that his reply and the letter of 8 June constitute a formal agreement between the United Nations and the Government of the Netherlands on the arrangements for the Study Tour.

Yours sincerely,

(sd.) M. NOLL-WAGENFELD

Meike Noll-Wagenfeld

Senior Legal Officer

Mr. Marcel van der Kolk

First Secretary

*Permanent Mission of the Netherlands
to the United Nations Office at Geneva*

Case postale 276

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Nr. VI

PERMANENT MISSION OF THE KINGDOM
OF THE NETHERLANDS TO THE OFFICE OF THE
UNITED NATIONS AND TO OTHER
INTERNATIONAL ORGANISATIONS AT GENEVA

No. mil/gev/0115/93

Genève, 17 September 1993

Dear Mr. Director-General,

With regard to the Study Tour of the Economic Commission for Europe, to be held in the Netherlands from 24 to 30 September 1993, I have the honour to acknowledge the following:

- a) your letters ref. G/LE-311/21 (NETHS), of 19 March 1993 (draft) and 8 June 1993,
- b) a letter from the Permanent Mission of the Kingdom of the Netherlands of 11 June 1993, no. 3598, being a reply to your letter mentioned under a.
- c) a letter from Ms. Noll-Wagenfeld, of 6 August 1993, ref. MNW/SZ, being a reply to the letter mentioned under b.
- d) a letter from the Permanent Mission of the Kingdom of the Netherlands of 30 August 1993, no. mil/ gev-0083/93, being a reply to the letter mentioned under c.
- e) a letter from Ms. Noll-Wagenfeld of 1 September 1993, being a reply to the letter mentioned under d.

The letters mentioned above are annexed hereto.

I have the honour to inform you that my Government is prepared to host the Study Tour in question. My Government agrees that the above-mentioned letters and this reply together constitute an Agreement between the Government of the Kingdom of the Netherlands and the United Nations, which enters into force on the date of receipt of this reply and shall remain in force for the duration of the Study Tour and for such additional period as is necessary for its preparation and winding up, the total duration of this agreement however not to exceed one year.

Please accept, Mr. Director-General, the assurances of my highest consideration.

(sd) J. F. BODDENS HOSANG

J. F. Boddens Hosang
Ambassador,
Permanent Representative of the
Kingdom of the Netherlands

*Mr. Vladimir Petrovsky
Director-General
United Nations Office at Geneva
Palais des Nations
1211 Geneva 10*

D. PARLEMENT

Het in de brieven vervatte verdrag behoeft ingevolge additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet juncto artikel 62, onderdeel c, van de Grondwet naar de tekst van 1972, niet de goedkeuring van de Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van het in de brieven vervatte verdrag zijn ingevolge het in de (voor)laatste alinea's van de brieven Nrs. I, V en VI gestelde op 17 september 1993 in werking getreden.

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

J. GEGEVENS

Van het op 26 juni 1945 te San Francisco tot stand gekomen Handvest der Verenigde Naties zijn de Franse en de Engelse tekst, zoals gewijzigd, geplaatst in *Trb.* 1979, 37 en de vertaling in het Nederlands in *Trb.* 1987, 113; zie ook laatstelijk, *Trb.* 1992, 101.

Van het op 13 februari 1946 te Londen tot stand gekomen Verdrag nopens de voorrechten en immuniteten van de Verenigde Naties, naar welk Verdrag wordt verwezen in onder meer artikel 4 van brief Nr. 1 zijn tekst en vertaling geplaatst in *Stb.* I 224; zie ook, laatstelijk, *Trb.* 1979, 35.

Uitgegeven de *achtentwintigste* oktober 1993.

De Minister van Buitenlandse Zaken a.i.,

W. KOK