

Extract from:

UNITED NATIONS JURIDICAL YEARBOOK

2002

Part One. Legal status of the United Nations and related intergovernmental organizations

Chapter I. Legislative texts concerning the legal status of the United Nations and related intergovernmental organizations



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Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. Belgium

LAW CONVEYING ACCEPTANCE OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, 1947

FEDERAL PUBLIC SERVICE OF FOREIGN AFFAIRS, EXTERNAL TRADE AND DEVELOPMENT COOPERATION

F. 2003—697 [2003/15016]

8 April 1954

LAW CONVEYING ACCEPTANCE OF THE CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS IN NEW YORK ON 21 NOVEMBER 1947 AT ITS SECOND SESSION (I)—ADDENDUM

On 23 December 2002 the Kingdom of Belgium undertook to apply the provisions of the above-mentioned Convention to the following specialized agencies, pursuant to section 43 of the Convention:

Annex X

INTERNATIONAL REFUGEE ORGANIZATION

The standard clauses shall operate without modification.

Annex XV

WORLD INTELLECTUAL PROPERTY ORGANIZATION

In their application to the World Intellectual Property Organization (hereinafter called “the Organization”), the standard clauses shall operate subject to the following modifications:

1. The privileges, immunities, exemptions and facilities referred to in article VI, section 21, of the standard clauses shall also be accorded to the Deputy Directors-General of the Organization.

2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

- (i) Immunity from personal arrest or seizure of their personal baggage;
- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;
- (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- (iv) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;
- (v) For their communications with the Organization, the right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags.

In connection with (iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

(b) Privileges and immunities are granted to the experts referred to in paragraph (a) above in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

Annex XVI

INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT

In their application to the International Fund for Agricultural Development (hereinafter called "the Fund") the standard clauses shall operate subject to the following provisions:

1. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Vice-President of the Fund.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Fund shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Fund;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability of their papers and documents relating to the work on which they are engaged for the Fund and, for the purpose of their communications with the Fund, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(ii) In connection with (d) of 2 (i) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;

(iii) Privileges and immunities are granted to the experts in the interests of the Fund and not for the personal benefit of the individuals themselves. The Fund shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Fund.

Annex XVII

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION

In their application to the United Nations Industrial Development Organization (hereinafter called “the Organization”) the standard clauses shall operate subject to the following modification:

1. (a) Experts (other than officials coming within the scope of article VI) serving as committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time on journeys in connection with service on such committees or missions:

(i) Immunity from personal arrest or detention and from seizure of their personal baggage;

- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the person concerned is no longer serving on committees of, or employed on mission for, the Organization;
 - (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
 - (iv) Inviolability for all papers and documents;
 - (v) For their communications with the Organization, the right to use codes and to receive documents and correspondence by courier or in sealed bags;
- (b) In connection with subparagraphs (iv) and (v) of paragraph 1 (a) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;
- (c) Privileges and immunities are granted to experts of the Organization in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organization;

2. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Deputy Director-General of the Organization.

On 23 December 2002 the Kingdom of Belgium accepted the following revised annexes, in accordance with section 47 of the Convention:

Second revised text of annex II

THE FOOD AND AGRICULTURE ORGANIZATION
OF THE UNITED NATIONS

In their application to the Food and Agriculture Organization of the United Nations (hereinafter called “the Organization”) the standard clauses shall operate subject to the following provisions:

1. Article V and section 25, paragraphs 1 and 2 (1), of article VII shall extend to the Chairman of the Council of the Organization and to the representatives of Associate Members, except that any waiver of the immunity of the Chairman under section 16 shall be by the Council of the Organization.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization

shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability of their papers and documents relating to the work on which they are engaged for the Organization and, for the purpose of their communications with the Organization, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(ii) In connection with (d) of 2 (i) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable;

(iii) Privileges and immunities are granted to the experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any experts in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organization.

3. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall be accorded to the Deputy Director-General and the Assistant Directors-General of the Organization.

Third revised text of annex VII

THE WORLD HEALTH ORGANIZATION

In their application to the World Health Organization (hereinafter called “the Organization”) the standard clauses shall operate subject to the following modifications:

1. Article V and section 25, paragraphs 1 and 2 (I), of article VII shall extend to persons designated to serve on the Executive Board of the Organization, their alternates and advisers, except that any waiver of the immunity of any such persons under section 16 shall be by the Board.

2. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Or-

ganization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

(a) Immunity from personal arrest or seizure of their personal baggage;

(b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;

(c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;

(d) Inviolability for all papers and documents;

(e) For the purpose of their communications with the Organization, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(ii) The privileges and immunities set forth in paragraphs (b) and (e) above shall be accorded to persons serving on Expert Advisory Panels of the Organization in the exercise of their functions as such;

(iii) Privileges and immunities are granted to the experts of the Organization in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

3. Article V and section 25, paragraphs 1 and 2 (I), of article VII shall extend to the representatives of Associate Members participating in the work of the Organization in accordance with articles 8 and 47 of the Constitution.

4. The privileges, immunities, exemptions and facilities referred to in section 21 of the standard clauses shall also be accorded to any Deputy Director-General, Assistant Director-General and Regional Director of the Organization.

Revised text of annex XII

INTERGOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. The privileges and immunities, exemptions and facilities referred to in article VI, section 21, of the standard clauses shall be accorded to the Secretary-General of the Organization, to the Deputy Secretary-General

and to the Secretary of the Maritime Safety Committee, provided that the provisions of this paragraph shall not require the Member in whose territory the Organization has its Headquarters to apply article VI, section 21, of the standard clauses to any person who is its national.

2. (a) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organization shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including time spent on journeys in connection with service on such committees or missions:

- (i) Immunity from personal arrest or seizure of their personal baggage;
- (ii) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity from legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organization;
- (iii) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- (iv) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization;
- (v) The right to use codes and to receive documents and correspondence by courier or in sealed dispatch bags for their communications with the Intergovernmental Maritime Consultative Organization.

In connection with section 2 (a) (iv) and (v) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

(b) Privileges and immunities are granted to such experts in the interests of the Organization and not for the personal benefit of the individuals themselves. The Organization shall have the right and duty to waive the immunity of any expert in any case where, in its opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization.

2. Canada

FIRST SESSION, THIRTY-SEVENTH PARLIAMENT,

49-50-51 ELIZABETH II, 2001-2002

STATUTES OF CANADA 2002

CHAPTER 12

AN ACT TO AMEND THE FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

Bill C-35—Assented to 30 April 2002

Summary

This enactment amends the Foreign Missions and International Organizations Act to modernize the privileges and immunities regime. This will allow Canada to comply with its existing commitments under international treaties and to respond to recent developments in international law. The enactment also corrects the deficiency in the existing statutory definition of “international organization”. The enactment further provides that the Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning of intergovernmental conferences. This clearer statutory authority supports security measures taken by Canadian police in fulfilling Canada’s obligations to protect persons who have privileges and immunities under the Act.

All parliamentary publications are available on the “Parliamentary Internet Parlementaire” at the following address: <http://www.parl.gc.ca>.

49-50-51 ELIZABETH II

CHAPTER 12

AN ACT TO AMEND THE FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

[Assented to 30th April 2002]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

FOREIGN MISSIONS AND INTERNATIONAL ORGANIZATIONS ACT

1. (1) The definition “international organization” in subsection 2 (1) of the *Foreign Missions and International Organizations Act* is replaced by the following:

“international organization”

“‘international organization’ means an intergovernmental organization, whether or not established by treaty, of which two or more

states are members, and includes an intergovernmental conference in which two or more states participate;”

(2) Subsection 2 (1) of the Act is amended by adding the following in alphabetical order:

“accredited mission”

“‘accredited mission’ means a permanent mission of a foreign state that is accredited to an international organization headquartered in Canada;”

2. Section 4 of the Act is amended by adding the following after subsection (3):

Detention of goods

“(4) The Minister of Foreign Affairs may, by order, authorize the detention by officers under the Customs Act of goods imported by a diplomatic mission or consular post of a foreign state for any period during which, in the opinion of the Minister, the foreign state applies any of the provisions of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations restrictively with the result that the privileges and immunities accorded to that state’s diplomatic mission and consular posts in Canada exceed those accorded to a Canadian diplomatic mission and Canadian consular posts in that foreign state.”

3. (1) The portion of subsection 5 (1) of the English version of the Act before paragraph (a) is replaced by the following:

Privileges and immunities

“5. (1) The Governor in Council may, by order, provide that”

(2) Paragraphs 5 (1) (c) to (e) of the Act are replaced by the following:

“(b.1) subject to subsection (1.2), accredited missions shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic missions of foreign states in Canada under the Vienna Convention on Diplomatic Relations;

“(c) representatives of a foreign state that is a member of or participates in an international organization shall, to the extent specified in the order, have the privileges and immunities set out in article IV of the Convention on the Privileges and Immunities of the United Nations;

“(d) representatives of a foreign state that is a member of an international organization headquartered in Canada, and members of their families forming part of their households, shall, to the extent specified in the order, have privileges and immunities comparable to

the privileges and immunities accorded to diplomatic representatives, and members of their families forming part of their households, in Canada under the Vienna Convention on Diplomatic Relations;

“(e) members of the administrative and technical staff, and members of their families forming part of their households, and the service staff of the mission of a foreign state that is a member of an international organization headquartered in Canada, other than persons who are Canadian citizens or permanent residents of Canada, shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to such persons under the Vienna Convention on Diplomatic Relations;”

...

(4) Subsection 5 (1) of the Act is amended by striking out the word “and” at the end of paragraph (h) and by adding the following after paragraph (h):

“(h.1) such other classes of persons as may be designated by the Governor in Council who, in accordance with a treaty, convention or agreement set out in Schedule IV, are entitled to privileges and immunities, and members of their families forming part of their households, shall, to the extent specified in the order, have privileges and immunities comparable to the privileges and immunities accorded to diplomatic agents, and members of their families forming part of their households, under the Vienna Convention on Diplomatic Relations; and”

(5) Section 5 of the Act is amended by adding the following after subsection (1):

Retroactive order

“(1.1) An order made under paragraph (1) (b) or subsection 6 (2) that has the effect of granting to an international organization or to an office of a political subdivision of a foreign state, as the case may be, any duty or tax relief privileges may, in relation to those privileges, if it so provides, be made retroactive.

Duty and tax relief privileges—accredited missions

“(1.2) An order made under paragraph (1) (b.1) may restrict or withdraw any duty or tax relief privileges in relation to a particular accredited mission for the purpose of according to that accredited mission treatment that is comparable to the treatment accorded by the foreign state in question to a Canadian permanent mission that is accredited to an international organization in that foreign state.

Retroactive order

“(1.3) An order made under paragraph (1) (b.1) that has the effect of granting to an accredited mission of the International Civil

Aviation Organization any tax relief privileges in relation to Part IX of the *Excise Tax Act* may, in relation to those privileges, if it so provides, be made retroactive and have effect with respect to any period beginning on January 1, 1991 at the earliest and ending on December 31, 2000 at the latest.”

(6) Section 5 of the Act is amended by adding the following after subsection (3):

Immigration restrictions

“(4) In the event of an inconsistency or conflict between an order made under subsection (1) and section 19 of the *Immigration Act*, the order prevails to the extent of the inconsistency or conflict.”

1995, c.5, par. 25 (1) (n)

4. Section 6 of the Act is replaced by the following:

Privileges, immunities and benefits

“6. (1) Subject to subsections (3) and (4), the Minister of Foreign Affairs may, by order,

“(a) grant to the office of a political subdivision of a foreign state, and to any person connected with that office, any of the privileges and immunities accorded under section 3 to consular posts, and to persons connected with those posts, other than duty and tax relief privileges;

“(b) extend any of the privileges and immunities granted under paragraph (a) to that office, and to any person connected with it;

“(c) grant to that office, and to any person connected with it, any of the benefits set out in the regulations;

“(d) withdraw any of the privileges, immunities or benefits granted under this subsection or subsection (2); and

“(e) restore any privilege, immunity or benefit withdrawn under paragraph (d).

Duty and tax relief privileges

“(2) Subject to subsections (3) and (4), on the joint recommendation of the Minister of Foreign Affairs and the Minister of Finance, the Governor in Council may, by order,

“(a) grant to the office of a political subdivision of a foreign state, and to any person connected with that office, any of the duty and tax relief privileges accorded under section 3 to consular posts and to persons connected with those posts;

“(b) extend any of the duty and tax relief privileges provided for in the Vienna Convention on Consular Relations that have been granted to that office, and to any person connected with it; and

“(c) grant to that office, and to any person connected with it, any duty or tax relief privilege not provided for in the Vienna Convention on Consular Relations.

Condition

“(3) Before the Minister makes an order under subsection (1) or the Governor in Council makes an order under subsection (2), the Minister or the Governor in Council, as the case may be, must be of the opinion that the office of the political subdivision of the foreign state performs, in Canada, duties that are substantially the same as the duties performed in Canada by a consular post as defined in article 1 of the Vienna Convention on Consular Relations.

Purpose of orders

“(4) An order made under subsection (1) or (2) must be for the purpose of according to the office of the political subdivision of the foreign state, and to any person connected with the office, treatment that is comparable

“(a) to the treatment accorded to the office of a Canadian political subdivision in the foreign state, and to persons connected with that office; or

“(b) if there is no office of a Canadian political subdivision in the foreign state, to the treatment that, in the opinion of the Minister or the Governor in Council, as the case may be, would, on the basis of assurances offered by that foreign state, be accorded to an office of a Canadian political subdivision in that foreign state, and to persons connected with that office.

Premises and archives

“(5) The Minister of Foreign Affairs may, by order, grant to the office of a political subdivision of a foreign state, and to the archives of that office, any of the immunities accorded to consular premises and consular archives by the Vienna Convention on Consular Relations for the purpose of according to that office treatment that is comparable

“(a) to the treatment accorded to the office of a Canadian political subdivision in the foreign state; or

“(b) if there is no office of a Canadian political subdivision in the foreign state, to the treatment that, in the opinion of the Minister, would, on the basis of assurances offered by that foreign state, be accorded to an office of a Canadian political subdivision in that foreign state.”

5. The Act is amended by adding the following after section 10:

“Security of intergovernmental conferences

Role of RCMP

“10.1 (1) The Royal Canadian Mounted Police has the primary responsibility to ensure the security for the proper functioning

of any intergovernmental conference in which two or more states participate, that is attended by persons granted privileges and immunities under this Act and to which an order made or continued under this Act applies.

Powers of RCMP

“(2) For the purpose of carrying out its responsibility under subsection (1), the Royal Canadian Mounted Police may take appropriate measures, including controlling, limiting or prohibiting access to any area to the extent and in a manner that is reasonable in the circumstances.

For greater certainty

“(3) The powers referred to in subsection (2) are set out for greater certainty and shall not be read as affecting the powers that peace officers possess at common law or by virtue of any other federal or provincial Act or regulation.

Arrangements

“(4) Subject to subsection (1), to facilitate consultation and cooperation between the Royal Canadian Mounted Police and provincial and municipal police forces, the Solicitor General may, with the approval of the Governor in Council, enter into arrangements with the government of a province concerning the responsibilities of members of the Royal Canadian Mounted Police and members of provincial and municipal police forces with respect to ensuring the security for the proper functioning of a conference referred to in that subsection.”

1995, c.5, par. 25 (1) (n)

6. Section 11 of the Act is replaced by the following:

Certificate of Minister of Foreign Affairs

“11. A certificate purporting to be issued by or under the authority of the Minister of Foreign Affairs and containing any statement of fact relevant to any of the following questions shall be received in evidence in any action or proceeding as proof of the fact stated in the certificate without proof of the signature or official character of the person appearing to have signed the certificate:

“(a) whether a diplomatic mission, a consular post or an office of a political subdivision of a foreign state has been established with the consent of the Government of Canada;

“(b) whether an organization or conference is the subject of an order under section 5;

“(c) whether a mission is accredited to an international organization;

“(d) whether any premises or archives are the premises or archives of an office of a political subdivision of a foreign state; or

“(e) whether any person, diplomatic mission, consular post, office of a political subdivision of a foreign state, international organization or accredited mission has privileges, immunities or benefits under this Act.

“Importation of alcohol

Importation of alcohol

“11.1 For greater certainty,

“(a) a person who, or a diplomatic mission, consular post, accredited mission or office of a political subdivision of a foreign state that, has privileges and immunities that are comparable to the privileges and immunities accorded under article 36 of the Vienna Convention on Diplomatic Relations or article 50 of the Vienna Convention on Consular Relations may, despite any provision of the *Importation of Intoxicating Liquors Act*, exercise those privileges and benefit from those immunities in respect of alcohol imported for their personal consumption or official use, as the case may be; and

“(b) an international organization that has privileges and immunities that are comparable to the privileges and immunities accorded under section 7 of article II of the Convention on the Privileges and Immunities of the United Nations may, despite any provision of the *Importation of Intoxicating Liquors Act*, exercise those privileges and benefit from those immunities in respect of alcohol imported for its official use.”

7. The heading before section 12 of the Act is replaced by the following:

“Regulations and orders”

8. Section 13 of the Act is amended by adding the following after subsection (2):

Amendment to Schedule IV

“(3) For the purpose of paragraph 5 (1) (h.1), the Governor in Council may, by order, add to or delete from Schedule IV a reference to a treaty, convention or agreement, or amend a reference in that Schedule.”

9. The Act is amended by adding, after Schedule III, the schedule set out in the schedule to this Act.

COORDINATING AMENDMENT

Bill C-11

10. If Bill C-11, introduced in the first session of the 37th Parliament and entitled the *Immigration and Refugee Protection Act* (“the other Act”), receives royal assent, then, on the later of the coming into force of

- (a) this Act, and
 - (b) the first of sections 33 to 43 of the other Act to come into force,
- subsection 5 (4) of the Foreign Missions and International Organizations Act is replaced by the following:

Immigration restrictions

“(4) In the event of an inconsistency or conflict between an order made under subsection (1) and any of sections 33 to 43 of the *Immigration and Refugee Protection Act*, the order prevails to the extent of the inconsistency or conflict.”

SCHEDULE

(Section 9)

Schedule IV

(Paragraph 5 (1) (h.1) and subsection 13 (3))

DESIGNATED TREATIES, CONVENTIONS AND AGREEMENTS

Agreement with the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Published under the authority of the Speaker of the House of Commons

Available from:

Public Works and Government Services Canada—Publishing,
Ottawa, Canada K1A 0S9

3. Republic of Colombia

FOUR COMMUNICATIONS FROM THE OFFICE OF PROTOCOL UNDER THE MINISTRY OF FOREIGN AFFAIRS CONCERNING DIPLOMATIC MISSIONS, INTERNATIONAL AGENCIES OR THE UNITED NATIONS SYSTEM'S OFFICES LOCATED IN COLOMBIA

I

Bogotá, 27 March 2002

The Office of Protocol under the Ministry of Foreign Affairs has the honour to inform the diplomatic missions and international agencies in Bogotá that this Office and the Value-Added Tax Division of the National Tax and Customs Office have agreed that, as from 15 April 2002, requests for refund of the value-added tax (VAT) must meet the following criteria:

1. Applications for refund of the VAT must include the original invoices, duly numbered, which will be returned to the diplomatic mission once the process has been completed;
2. The invoices attached to the application must be made out in the name of the staff member entitled to the exemption or to members of his or her family who are accredited with this Office;
3. Cash register receipts issued by supermarkets or grocery stores shall be accepted only where accompanied by the corresponding itemized receipt issued by the supermarket or grocery store in question;
4. Application for refund of the VAT on locally purchased vehicles must attach a certificate issued by the Office of Protocol;
5. It is recommended that invoices should be submitted within two months of purchase.

Diplomatic missions and international agencies
Bogotá

II

Bogotá, 19 June 2002

Sir,

I have the honour to refer you to your Communication No. 2140 of 28 September 2001 concerning accreditation of internationally recruited staff of agencies of the United Nations system with offices in Colombia.

Mr. Cesar Miquel
Resident Representative
United Nations Development Programme (UNDP)
Bogotá

The Office of Protocol has completed its consideration of this document and of the study carried out jointly with your Office at a meeting held on 12 March 2002 and has reached the following conclusions.

Accreditation and privileges

Generally speaking, the Office's criteria for the accreditation of internationally recruited staff of the United Nations system shall continue to be governed by the provisions of the 1946 Convention on the Privileges and Immunities of the United Nations and of the various headquarters agreements signed by Colombia; by the relevant domestic legislation; and by the principles and practice followed by the Ministry of Foreign Affairs in matters relating to privileges and immunities, which are described below.

In considering and establishing the level of accreditation, and hence the privileges to which the new staff member is entitled, the Office of Protocol shall bear in mind the scale established in Appendix A to the United Nations Staff Rules. In each case, this Office shall therefore be notified of the category of this scale into which the accredited staff member falls.

The Office of Protocol shall be notified, through transmission of the relevant information (Form No. DP-002), of the names of persons who, under special agreements concluded with the Government of Colombia, have been appointed by the Secretary-General of the United Nations as his special representatives or advisers or their deputies. Any relevant information on the permanent or occasional presence of such persons in Colombia during the performance of their duties shall also be provided.

Staff members appointed to the post of resident representative, system coordinator, representative, head of mission or director, depending on the title established by the official in charge of the United Nations programme, body or agency, shall continue to be accredited in the diplomatic category equivalent to that of Ambassador and may avail themselves of the duty-free import entitlement established in article 6 (a) of Decree No. 2148 (1991). They shall be entitled to a diplomatic identity card (with a red border), driving licence and special CD licence plates.

Staff members serving as deputy to the primary representative of a programme, body or agency of the United Nations system in a category equal to or higher than P-4 and United Nations staff members in the same category shall be accredited in the diplomatic category equivalent to that of the members of diplomatic missions for purposes of entitlement to the duty-free import entitlement established in article 6 (b) of Decree No. 2148 (1991). They shall be entitled to an identity card (with a yellow border), driving licence and special OI licence plates.

Internationally recruited staff members and experts of the United Nations system in a category lower than P-4 shall be accredited in the category equivalent to that of administrative staff and shall be entitled only to

the duty-free import entitlement established in article 6 (c) of Decree No. 2148 (1991). They shall be entitled to an identity card (yellow border) and special OI licence plates.

Experts working with United Nations Volunteers with initial contracts of at least two years' duration shall be accredited as administrative staff and shall enjoy the rights established for that category.

Internationally recruited staff members of United Nations Volunteers with contracts of between one (1) and two (2) years' duration shall receive an identification card issued by the Ministry and shall be entitled to duty-free import of their household effects.

Internationally recruited staff members of the United Nations system who enter the country for postings of up to one (1) year's duration shall be granted temporary accreditation and shall be entitled only to an identity card issued by the Office of Protocol. The renewal of a one-year contract shall not change the staff member's accreditation status (temporary), nor shall it give rise to the right to duty-free import of goods.

The Office of Protocol shall accept registration of the following persons as family members of a United Nations system staff member or expert:

(a) The spouse and immediate family habitually resident with and financially dependent on the accredited person;

(b) The accredited person's domestic partner, upon presentation of a document certifying that the consensual union between a man and a woman has been previously registered and recognized in their respective countries of origin. This requirement must be met:

—At the time of application for a visa while outside Colombia; or

—At the time when the Ministry is notified that the staff member or expert has begun work and when the relevant documents are requested in cases where, under a relevant agreement, the said staff member or expert and/or his or her domestic partner do not require a visa for entry into Colombia.

This Office should be consulted with due notice regarding any case not covered by sections (a) and (b) above.

The Office of Protocol shall issue an identity card to foreign nationals who enter Colombia in the domestic service of a staff member or expert, subject to their prior registration (Form DP-003) and submission of copies of the individual's passport and employment contract.

The Office of Protocol shall approve reaccreditation of a staff member or expert who, within a short period of time, is reassigned to another programme, body or agency of the United Nations system with an office in Colombia only where the posting occurs within six (6) months of the date of termination of the previous posting and where it can be demonstrated

that the person in question has left Colombia by reason of such termination and has remained abroad for a continuous 60-day period.

Staff members or experts in this situation shall be authorized to:

- (a) Import their household effects duty-free; and
- (b) Import an automobile duty-free unless they availed themselves of this entitlement during their previous posting.

Internationally recruited staff members and experts of the United Nations system who are Colombian nationals or residents shall be accredited through the usual procedures and documents, provided that they are assigned to serve as the legal representatives of a programme, body or agency of that system. Other Colombian nationals and residents may be recorded in the database; however, for all civil procedures, they must provide proof of their Colombian citizenship or residence, as appropriate. Neither of these categories of staff shall be entitled to privileges.

The rights of staff members of the United Nations system who are Colombian nationals, upon their permanent return to Colombia, are set forth in article 11 of Decree No. 2148 (1991) as amended by Decree No. 379 (1993).

Official licence plates

In the case of official vehicles owned by a programme, body or agency of the United Nations system, both the holders of existing plates and those who register with the Office of Protocol in the future will be issued new plates, following a procedure based on article 5 (3) of Decree No. 2148 (1991): CD plates for one (1) official vehicle and OI plates for any additional official vehicles.

In due course, each head of mission shall inform the Office of Protocol of the official vehicle on which the CD plates have been placed.

Immunities

While in Colombia, staff members and experts of the United Nations system shall enjoy the immunities established in the 1946 Convention on the Privileges and Immunities of the United Nations and in the various headquarters agreements.

Important note

Procedures established in this document which in any way differ from former practice shall be implemented as from the fifth working day following delivery of the document to its recipient; however, at no time shall they have retroactive effect with respect to the category of accreditation of staff members or experts of the United Nations system who are currently serving in Colombia.

Lastly, this Office requests the Honourable Representative of the United Nations Development Programme (UNDP) to bring the aforemen-

tioned regulations to the attention of the Resident Coordinator and of the bodies and agencies of the United Nations system with offices in Colombia so that they may comply with them.

(Signed) Carlos Alberto BERNAL ROMAN
Director, Office of Protocol

III

Bogotá, 5 August 2002

Sir,

I have the honour to refer to your letter No. ADM/250/32 of 24 June 2002 concerning the duty-free import entitlements of internationally recruited staff of the United Nations system who are posted to Colombia for periods of one (1) year.

With regard to the hiring procedure followed by the United Nations system and mentioned in that letter, this Office has reconsidered the point at issue and has concluded that:

1. The above-mentioned staff members shall enjoy the rights (with respect to their furniture, household effects and personal baggage) established in article V, section 18 (g), and article VI, section 22 (f), of the 1946 Convention on the Privileges and Immunities of the United Nations, adopted by Colombia through Act No. 62 (1973). Application for this type of duty-free import entitlement, referred to as “installation” in article 1 of Decree No. 2148 (1991), must be made during the first year following the date of the beneficiary’s accreditation in Colombia, a date to which this Office has made explicit reference in its letters on the matter.

2. The duty-free import of one vehicle may also be authorized during the first year following the date of the beneficiary’s accreditation. In no case shall this duty-free installation entitlement be granted after the expiration of that time period.

3. The amount and conditions of the duty-free entitlements, which include household effects and a vehicle, shall remain subject to the category of accreditation (diplomatic or administrative) in accordance with the equivalencies established by this Office in its Letter No. PR/CPV 23163

Mr. Cesar Miquel
Resident Representative
United Nations Development Programme (UNDP)
Bogotá

of 19 June 2002 and with the beneficiary's category in the United Nations scale, of which the Office of Protocol must in each case be informed.

4. This Office must be informed in due course of contract expirations and renewals; in the latter case, it must be borne in mind that service must be continuous under article 13 of Decree No. 2148 (1991) and, in particular, subparagraph (a) thereof, where applicable.

The foregoing shall constitute an amendment to the second paragraph on page 3 of Letter No. PR/CPV 23163 of 19 June 2002, only insofar as the latter refers to internationally recruited staff with postings of one (1) year's duration.

As on the previous occasion, this Office requests your Office to bring the aforementioned regulations to the attention of the Resident Coordinator and of the bodies and agencies of the United Nations system with offices in Colombia so that they may comply with them.

(Signed) Carlos Alberto BERNAL ROMAN
Director, Office of Protocol

IV

Bogotá, 5 September 2002

The Office of Protocol under the Ministry of Foreign Affairs has the honour to inform the diplomatic missions and international agencies in Bogotá that this Office and the Legal Department of the National Tax and Customs Office have been obliged to consider the applicability of the diplomatic duty-free import entitlement established in Decree No. 2148 (1991) concerning the import of merchandise for the use of Colombian Government agencies involved in cooperation projects. Having concluded its analysis, the Office of Protocol under the Ministry of Foreign Affairs wishes to inform you of the following:

1. Diplomatic missions may not interpret the concept of the diplomatic duty-free entitlement in a manner different from that of the Government of Colombia at the time of issuance of its Decree No. 2148 (1991); in other words, this entitlement is limited to the import of goods intended for the limited consumption by or use of the diplomatic mission or for the consumption by or use of the accredited staff of such missions and members of their families who are so entitled.

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2. Diplomatic missions should bear in mind that transfer of the diplomatic duty-free entitlement is expressly prohibited and that it is therefore illegal to extend that benefit to other merchandise imported under and for the implementation of cooperation agreements concluded with national or municipal bodies and for the use of persons who are neither the internationally recruited staff beneficiaries mentioned in article 3 of Decree No. 2148 (1991) nor the offices of the missions which are beneficiaries under article 5 of that Decree.

3. Diplomatic missions which, in connection with the implementation of cooperation agreements, import goods into Colombia for the use of national or municipal government agencies should require those agencies to seek appropriate guidance from the National Tax and Customs Office or from experts in customs matters in order to avoid engaging in practices which violate Colombian tax law.

4. The Office of Protocol will also reject applications for import under the diplomatic duty-free entitlement of goods or merchandise which are intended for the use of or consumption by parties not covered thereby or which clearly do not fall within the mission's normal functions.