

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

CASE NUMBER:

In the matter between:

THE SOUTH AFRICA LITIGATION CENTRE	APPLICANT
and	
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	FIRST RESPONDENT
THE DIRECTOR-GENERAL OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	SECOND RESPONDENT
THE MINISTER OF POLICE	THIRD RESPONDENT
THE COMMISSIONER OF POLICE	FOURTH RESPONDENT
THE MINISTER OF INTERNATIONAL RELATIONS AND COOPERATION	FIFTH RESPONDENT
THE DIRECTOR-GENERAL OF INTERNATIONAL RELATIONS AND COOPERATION	SIXTH RESPONDENT
THE MINISTER OF HOME AFFAIRS	SEVENTH RESPONDENT
THE DIRECTOR-GENERAL OF HOME AFFAIRS	EIGHTH RESPONDENT
THE NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	NINTH RESPONDENT
THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	TENTH RESPONDENT
THE HEAD OF THE DIRECTORATE FOR PRIORITY CRIMES INVESTIGATION	ELEVENTH RESPONDENT
THE DIRECTOR OF THE PRIORITY CRIMES LITIGATION UNIT	TWELFTH RESPONDENT

ANSWERING AFFIDAVIT

I, the undersigned,

TERRESA NONKULULEKO SINDANE

do hereby make oath and state as follows:

1.

I am the Director-General: Justice and Constitutional Development (*"the Second Respondent"*) and the Central Authority as defined in section 1 of the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002 (*"the ICC Implementation Act"*). In view of the fact that this matter relates to the provisions of the ICC Implementation Act, I am duly authorised to depose to this affidavit. In addition hereto and in view of the undue time constraints set by the Applicant, I have also been authorised by all the other Respondents cited herein to depose to this affidavit on their behalf as well.

2.

The facts contained in this affidavit are within my own personal knowledge, unless otherwise stated or indicated and are to the best



of my knowledge and belief true and correct. Insofar as I make legal submissions in this affidavit, I do so as a result of advice received from Respondents legal representatives.

3.

I have read the founding and supplementary affidavits deposed to by **KAJAL RAMJATHAN-KEOGH** and intends to answer thereto *ad seriatim*. However and before doing so, I am advised to refer the Court to the following:

3.1 On or about January 2015, the Republic of South Africa agreed to host an African Union ("AU") Summit during June 2015.

3.2 In order to facilitate the hosting of the AU Summit, the Republic of South Africa was required to enter into an agreement with the Commission of the AU, specifically relating to the material and technical organization of the meetings (hereinafter referred to as "*the host agreement*"). The host agreement was concluded on or about 4 June 2015. I refer the Court to a copy of the host agreement annexed hereto as **Annexure "A"**.

- 3.3 The preamble to the host agreement, *inter alia*, records the following:

"These Meetings which are provided for in the Constitutive Act of the African Union, the Rules of Procedures of the Assembly, the Executive Council and the Permanent Representatives' Committee as well as in decisions of the African Union policy organs will be held in Pretoria, Republic of South Africa, from 7 to 9 June, and from 10 to 13 June and on 14 to 15 June 2015 in Johannesburg, respectively, at the invitation of the Government.

Accordingly, the Commission is charged with the exclusive responsibility of organising, conducting and managing the Meetings, while the Government will, on its part, provide all the necessary facilities and assistance to ensure the success and smooth running of the Meetings."

- 3.4 I should immediately interpose to state that although the preamble to the host agreement contains the phrase "*at the invitation of the Government*", the Republic of South Africa was in no manner whatsoever involved or responsible for extending invitations to any or all of the delegates or attendees of the AU Summit.

- 3.5 The preamble to the host agreement clearly provides that the Commission of the AU is charged with the exclusive responsibility of organising, conducting and managing the meetings. I therefore reiterate that the Republic of South Africa merely agreed to ~~host~~ the AU Summit, whilst the Commission of the AU was solely responsible for ~~inviting~~ all the delegates and attendees of the AU Summit.

3.6 It is apparent from the contents of the host agreement that most of the terms contained therein relates to the provision of the necessary facilities and assistance rendered by the Republic of South Africa to ensure the success and smooth running of the AU Summit.

3.7 However, the provisions of Article VIII of the host agreement is of singular importance. This Article specifically provides for privileges and immunities. Clause 1 of Article VIII record that the Republic of South Africa shall accord the Members of the Commission and Staff Members, the delegates and other representatives of Inter-Governmental Organisations attending the Meetings the privileges and immunities set forth in Section C and D, Articles V and VI of the General Convention on the Privileges and Immunities of the OAU (*"the OAU Convention"*). I refer the Court to a copy of this Convention annexed hereto as **Annexure "B"**.

3.8 I deem it necessary to refer the Court to Section C, Article V(1)(a) and (g) of the OAU Convention, which read as follows:

"1. Representatives of Member States to the principal and subsidiary institutions, as well as to the Specialized Commission of the

Organization of African Unity, and to conferences convened by the Organization, shall, while exercising their functions and during their travel to and from the place of meetings, be accorded the following privileges and Immunities;

- (a) Immunity from personal arrest or detention and from any official interrogation as well as from inspection or seizure of the personal baggages;
- (g) ^{***} Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of the personal baggage) or from exercise duties or sales taxes."

3.9 The aforesaid provisions are indeed contained in the Vienna Convention on Diplomatic Relations, 1961 (*"the Vienna Convention"*), which has the force of law in terms of section 2 of the Diplomatic Immunities and Privileges Act 37 of 2001 (*"the DIPA"*). I refer the Court to a copy of this Act annexed hereto as **Annexure "C"**.

3.10 More particularly, Article 29 of the Vienna Convention specifically provides that the person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

3.11 Accordingly and in order to give effect to the provisions of the host agreement, the Fifth Respondent on 5 June 2015 and in terms of the provisions of section 5(3) of DIPA read with section 231(4) of the Constitution, published Article VIII of the host agreement under *Government Gazette* No 38860 and thereby incorporated the privileges and Immunities accorded delegates and attendees of the AU Summit as provided for in the host agreement, as domestic law in South Africa. I refer the Court to a copy of this *Government Gazette* annexed hereto as **Annexure "D"**.

3.12 I am therefore advised that the provisions of Article VIII of the host agreement are specific privileges and immunities extended by the AU to all its delegates and attendees of the AU Summit, which the hosting country of an AU Summit, the Republic of South Africa in this Instance, is required to uphold.

3.14 I respectfully submit that the Court should take cognizance of the fact that the provisions of the host agreement (**Annexure "A"** hereto) read with the contents of *Government Gazette* No 38860 (**Annexure "D"** hereto) are only effective for the duration of the AU Summit in South Africa, provided that the host agreement specifically provides for its termination 2 days

after conclusion of the AU Summit. By necessary Implication, the provisions of Article VIII will therefore cease to be effective after the expiration of the aforesaid period.

3.14 It is common cause that during 2009 and 2010, the International Criminal Court (*the ICC*) issued two (2) warrants of arrest in respect of the President of the Republic of Sudan, Omar Hassan Ahmad Al Bashir (*President Bashir*). In terms of Article 59 of the Rome Statute, South Africa as a State Party was requested by the ICC to arrest President Bashir in the event that President Bashir is in the Republic of South Africa.

3.15 During 2009, President Bashir was invited by South Africa to attend the inauguration of President Zuma in South Africa. However and as a result of the 2009 warrant of arrest issued by the ICC and South Africa's obligation to give effect thereto, President Bashir declined South Africa's invitation to attend the inauguration.

3.16 After having agreed to host the AU Summit during June 2015, the Government of South Africa, through the appropriate diplomatic channels received confirmation from the Republic of

Sudan that President Bashir will attend the AU Summit, with a concomitant request by the Republic of Sudan that President Bashir shall be granted the necessary privileges and immunities as provided for in Article VIII of the host agreement.

3.17 I am aware that the Executive Authority of the Republic of South Africa discussed and reviewed the aforesaid request received by the Republic of Sudan. I am however not privy to the contents or resolutions taken by Cabinet in respect of this issue and refer the Court to the affidavit of Dr Cassius Reginald Lubisi, the Secretary of Cabinet and Director General of the Presidency, in this regard.

3.18 In the event that the Applicant may argue that section 4(2) of the ICC Implementation Act removes the immunity and privileges of President Bashir, to the extent that the Respondents are obliged to arrest President Bashir, such an argument is misconceived for the following reasons:

3.18.1 I am advised that sections 4(2)(a) and (b) of the ICC Implementation Act read with subsection 4(2)(i) addresses criminal responsibility, as opposed to

immunity, by providing that the fact that a person, *inter alia*, is or was a head of state or a member of a security service or armed force, is not a defence to a crime as defined in the ICC Implementation Act.

3.18.2 It is in this regard pertinent to note that the Applicant has indeed recognised the aforesaid distinction in paragraph 19 of its founding affidavit and by implication does not proffer an argument relating to immunity on this issue.

3.18.3 I am further advised that sections 4(2)(a) and (b) of the ICC Implementation Act read with subsection 4(2)(ii) addresses the fact that a person who has been found guilty may not rely on their status in order to mitigate their sentence. It is therefore unrelated to any immunity issue.

3.18.4 I am in any event advised that section 4(2) of the ICC Implementation Act does not apply to matters of co-operation with the ICC but is rather concerned with matters relating to prosecution before South African courts.

3.19 In view of the above, I am advised that the immunities and privileges referred to in Article VIII of the host agreement (which is law in South Africa) prevents the Respondents from arresting President Bashir during the duration of the AU Summit and an additional two days after the conclusion of the AU Summit.

3.20 In the premises, the Applicant is therefore not entitled to any relief claimed in the notice of motion. Wherefore the Court should dismiss the application based on the aforesaid, with costs consequent upon the employment of two counsel.

4.

I will now turn to answer the allegations raised by the Applicant in its founding and supplementary affidavits.

AD FOUNDING AFFIDAVIT

5.

AD PARAGRAPHS 1 and 2 THEREOF:

I note the contents hereof.

6.

AD PARAGRAPH 3 THEREOF:

Save to deny that the contents of the affidavit are true, I note the remainder hereof.

7.

AD PARAGRAPHS 4, 5 and 6 THEREOF:

I have no personal knowledge of the contents hereof, but do not dispute these allegations for purposes of this application.

8.

AD PARAGRAPH 7 THEREOF:

I admit the contents hereof insofar as it refers to past litigious matters, more particularly the Constitutional Court ruling made in 2014 pertaining to the obligations on the South African police service to investigate alleged crimes against humanity committed in Zimbabwe in 2005. However, it will become apparent hereunder that the blanket allegation made in this paragraph by the Applicant cannot be applied to the facts in the present matter.



9.

AD PARAGRAPHS 8 and 9 THEREOF:

I have no personal knowledge of the contents hereof and I am therefore in no position to admit or deny same, does however not admit it.

10.

AD PARAGRAPH 10 THEREOF:

Save to deny that the Applicant is entitled to any of the relief sought in the notice of motion, I note the contents hereof.

11.

AD PARAGRAPH 11 (including 11.1 to 11.6) THEREOF:

I have no personal knowledge of the contents hereof and I am therefore in no position to admit or deny same.

12.

AD PARAGRAPH 12 THEREOF:



I admit the contents hereof.

13.

AD PARAGRAPH 13 THEREOF:

I deny the veracity of the last sentence of this paragraph and note that the Applicant merely list 10 Respondents herein, whilst the heading of the Applicant's papers cites 12 Respondents.

14.

AD PARAGRAPH 14 THEREOF:

I note the contents hereof.

15.

AD PARAGRAPHS 15 and 16 THEREOF:

I admit the contents hereof.

16.

AD PARAGRAPH 17 THEREOF:

Save to admit that President Bashir is being accused of having committed a variety of criminal acts under the Rome Statute, I am



not in a position to comment on his criminal responsibility for the criminal acts mentioned herein.

17.

AD PARAGRAPH 18 THEREOF:

I admit the contents hereof.

18.

AD PARAGRAPH 19 THEREOF:

I admit the contents hereof insofar as it relates to the provisions of Article 27 of the Rome Statute. However, I am advised that the same rules do not necessarily extend to proceedings in South African courts.

19.

AD PARAGRAPH 20 THEREOF:

Save to admit that the ICC has issued a first warrant of arrest for President Bashir, I have no personal knowledge of the remainder hereof and I am in no position to either admit or deny same.



20.

AD PARAGRAPHS 21 and 22 THEREOF:

I admit the contents hereof insofar as it accords with the warrants issued by the ICC annexed to the founding affidavit as **Annexures "KRK9" and "KRK10"**.

21.

AD PARAGRAPH 23 THEREOF:

I note the contents hereof.

22.

AD PARAGRAPH 24 THEREOF:

I admit that the South African officials confirmed that they would arrest President Bashir should he arrive in the country during May 2009. However, I should immediately interpose and confirm that the aforesaid undertaking by the South African officials transpired exclusively as a result of an invitation extended by the South African Government for President Bashir to attend the inauguration of President Zuma. The facts in this matter are however not supportive of a similar undertaking by South African officials in this instance, for



the simple reason that the African Union invited President Bashir to attend an African Union Summit which is simply being hosted in South Africa.

23.

AD PARAGRAPHS 25, 26 and 27 THEREOF:

I admit the content hereof.

24.

AD PARAGRAPH 28 THEREOF:

I deny that the applicable "national law" in South Africa is the Criminal Procedure Act 51 of 1977 ("the CPA"). I repeat that the promulgation of Article VIII of the host agreement also constitutes applicable national law in this instance.

25.

AD PARAGRAPH 29 THEREOF:

I note the contents hereof.

26.

AD PARAGRAPHS 30 through 36 THEREOF:

I admit the contents hereof insofar as it conforms to the specific provisions of the ICC Implementation Act referred to herein.

27.

AD PARAGRAPH 37 THEREOF:

I do not dispute the contents hereof. However and in view of what I have already stated in paragraph 3 above, I respectfully submit that the Respondents are not in violation of the rule of law in this instance.

28.

AD PARAGRAPHS 38 to 40 THEREOF:

I repeat what I have stated in the immediate preceding paragraph and confirm that there is no basis for the Court in this matter to resort to the provisions of section 172(1)(a) or (b) of the Constitution.

29.

AD PARAGRAPHS 41 to 42.3 THEREOF:

I deny the contents hereof for all the reasons stated in paragraph 3 above.

30.

AD PARAGRAPH 43 THEREOF:

I deny that the Respondents have failed in their legal duties as alleged herein. In this regard, I reiterate and repeat that the Commission of the AU invited President Bashir to attend an AU Summit which is hosted by South Africa. Moreover, I confirm that the Respondents are precluded from arresting President Bashir whilst he is in attendance of the AU Summit under the specific privileges and immunities extended by Article VIII of the AU.

31.

AD PARAGRAPHS 44 to 44.3 THEREOF:

I deny that the Applicant is entitled to claim the relief listed herein for all the reasons already proffered above.

32.

AD PARAGRAPHS 45 and 46 THEREOF:



I deny the contents hereof and specifically state that the Applicant clearly fails to acknowledge or appreciate the specific terms and conditions upon which the Republic of South Africa is hosting the AU Summit.

33.

AD PARAGRAPHS 47 to 52 THEREOF:

I deny that this matter is by its nature urgent. It is clear from the contents of paragraph 3 above that President Bashir will attend the AU Summit under the auspices of the specific terms and conditions of the AU, more specifically the privileges and immunities accorded to President Bashir as an invitee of the AU. Accordingly, there can be no room for the allegation that South Africa will have failed in any of its duties to the ICC in the event that President Bashir is not arrested whilst attending the AU Summit.

34.

AD PARAGRAPHS 53 to 58 THEREOF:

Save to note the Applicant's standing in this matter, I deny the remainder hereof for the reasons already proffered hereinabove.

35.



AD PARAGRAPHS 59 to 62 THEREOF:

I deny the contents hereof and repeat what I have already stated hereinbefore regarding the issues raised herein. More particularly, I deny that the Applicant is entitled to any relief claimed in the notice of motion. Wherefore I respectfully request this Honourable Court to dismiss the application with costs consequent upon the employment of two counsel.

AD SUPPLEMENTARY AFFIDAVIT

36.

AD PARAGRAPH 1 THEREOF:

I note the contents hereof but however deny the correctness of the Applicant's allegation made in respect of the further documentation listed herein.

37.

AD PARAGRAPHS 2 to 6 THEREOF:

I note the correspondence referred to in to in these paragraphs. The said correspondence could not take the matter any further because



President Al-Bashir was together with the other African Head of State granted diplomatic immunity.

38.

AD PARAGRAPHS 7, 8 and 9 THEREOF:

38.1 I reiterate and repeat what I have already stated above in respect of the promulgation of Article VIII in Government Gazette No 38860 (**Annexure "D"** hereto).

38.2 In addition, I confirm that the promulgation and publication of **Annexure "D"** hereto transpired uncontested and there was no objections received consequent upon its publication.

38.3 Moreover, the Applicant clearly fails to appreciate the purpose and effect of **Annexure "D"** hereto. I accordingly deny that the publication and promulgation of **Annexure "D"** is unlawful and invalid. The applicant has brought no application to set aside the notice. Until it does so, the notice is for all intents and purposes valid and lawful and it must be enforced.

39.



AD PARAGRAPHS 10 and 11 THEREOF:

39.1 I deny that **Annexure "KRK16"** to the supplementary affidavit constitutes an urgent judgment by the ICC Pre-Trial Chamber. Full legal argument will be made on this issue during the hearing hereof.

39.2 In any event, I have already indicated above that South Africa will not breach any of its obligations towards the ICC if President Bashir is not arrested whilst attending the AU Summit.

39.3 I deny that the Applicant is entitled to any relief set out in the notice of motion.

WHEREFORE I respectfully ask for an order dismissing the relief sought in the notice of motion with costs consequent upon the employment of two counsel.




Deponent



Signed and sworn before me at **PRETORIA** on this **15th** day of **JUNE 2015** after the Deponent declared that she is familiar with the contents of this statement and regards the prescribed oath as binding on her conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).

Maj



COMMISSIONER OF OATHS

FULL NAMES: Gerrit Holliday
CAPACITY: Major
ADDRESS: SAPS Head Office
Financial Services
Pretorius Str. 251

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Annexure "A"

AGREEMENT

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

**THE COMMISSION OF THE AFRICAN UNION ON
THE MATERIAL AND TECHNICAL ORGANIZATION OF THE
MEETINGS**

OF

**THE 30TH ORDINARY SESSION OF THE PERMANENT
REPRESENTATIVES COMMITTEE
FROM 7 TO 9 JUNE 2015**

**THE 27TH ORDINARY SESSION OF THE EXECUTIVE COUNCIL
FROM 10 TO 12 JUNE 2015**

AND

**THE 25TH ORDINARY SESSION OF THE ASSEMBLY
ON 14 TO 15 JUNE 2015**

**IN PRETORIA (7 AND 8 JUNE 2015) AND JOHANNESBURG (10 TO
15 JUNE 2015), REPUBLIC OF SOUTH AFRICA**

PREAMBLE

The present Agreement concluded between the Government of the Republic of South Africa, hereinafter referred to as "the Government", and the Commission of the African Union (AU), hereinafter referred to as "the Commission", relates to the material and technical organization of the Meetings of the 30th Ordinary Session of the Permanent Representatives' Committee (PRC), the 27th Ordinary Session of the Executive Council and the 25th Ordinary Session of the Assembly of the Union (Assembly), and any other side Meetings that may be considered necessary by the Commission.

These Meetings which are provided for in the Constitutive Act of the African Union, the Rules of Procedures of the Assembly, the Executive Council and the Permanent Representatives' Committee as well as in decisions of the African Union policy organs will be held in Pretoria, Republic of South Africa, from 7 to 9 June, and from 10 to 13 June and on 14 to 15 June 2015 in Johannesburg, respectively, at the invitation of the Government.

Accordingly, the Commission is charged with the exclusive responsibility of organizing, conducting and managing the Meetings, while the Government will, on its part, provide all the necessary facilities and assistance to ensure the success and smooth running of the Meetings.

Furthermore, in accordance with the relevant provisions of the African Union Financial Rules and Regulations and Rules 6(2) and 5(2) of the Rules of Procedure of the Executive Council and the Assembly, respectively, the Government shall bear the additional expenses incurred by the Commission arising from the holding of the Meetings outside the African Union Headquarters.

For these Meetings to be held under the best possible conditions, the Government and the Commission have agreed as follows:

**ARTICLE I
CONFERENCE FACILITIES**

A. PREMISES

1. The Government shall, at its expense, make available to the Commission, rooms and offices with the following facilities needed for the Summit meetings and side events:

- a) One (1) Plenary Hall containing at least one thousand (1000) seats with corresponding desks, equipped with microphones, earphones, six (6) interpretation booths, one (1) tape recording cabin complete with recording machines;
- b) One (1) podium centrally located at the far end of the Hall, facing the delegates' row. The Podium shall be equipped with at least eight (8) armchairs and corresponding microphones and earphones. The podium shall be provided with an African Union desk flag and a gavel;
- c) One (1) Speaker's Rostrum complete with microphone and suitable reading lamp. The Rostrum shall be situated on the forward centre portion of the platform below the Podium;
- d) Desks to seat at least twelve (12) African Union Officers to be situated near the Rostrum, with individual earphones, serving for the purpose of report writing for the Commission;
- e) Seating area equipped with earphones for at least fifty (50) observers in the Plenary Hall;
- f) Seating area equipped with earphones for members of the media (at least one hundred (100)) in the Plenary Hall during the Opening Sessions of the Meetings. An overspill area equipped with audiovisual recording facilities, shall also be made available from where journalists can watch live coverage of the open sessions;
- g) Space on the floor of the Plenary Hall shall be made available to accommodate camera persons and photographers wishing to take photos during the Open Sessions of the Meetings. Alternatively, a system shall be worked out to ensure that all camera persons get turns to take pictures and video footage of the Open Sessions of the Meetings;
- h) Four (4) suitable Rooms for Committee/side/parallel Meetings or events, to accommodate seating for not less than hundred ten (110) delegates each and with corresponding central desk and name plates, as well as microphones, earphones and five (5) interpretation booths each. The Drafting Team shall also use one (1) of these four (4) rooms for its meetings;



- i) One (1) Room to seat twenty to twenty-five (20-25) persons for Consultation Meetings. It shall also be used for the daily meetings of the Commission Conference Coordination Committee;
- j) Offices for the Chairperson of the Commission, the Deputy Chairperson and the eight (8) Commissioners;
- k) Suitable offices/ working space for:
 - (i) Staff of the Bureau of the Chairperson of the Commission;
 - (ii) Staff of the Bureau of the Deputy Chairperson of the Commission;
 - (iii) Secretary General of the Commission;
 - (iv) Legal Counsel;
 - (v) Chief of Protocol of the African Union;
 - (vi) Information and Communication Directorate;
 - (vii) The Finance and Personnel Services;
 - (viii) The Conference Coordination Unit, large enough to seat at least eight (8) persons;
 - (ix) Documents Distribution;
 - (x) Documents Reproduction;
 - (xi) Typing Pools for the four (4) working languages;
 - (xii) Revisers and Translators for four (4) language units;
 - (xiii) Proof-readers for four (4) language units;
 - (xiv) The Report-drafting team;
 - (xv) Protocol Reception and Delegates Registration Desk;
 - (xvi) Doctor's Consultation Room and Conference Clinic with installed medical emergency facilities;
 - (xvii) Storage Room for office supplies and materials;

2. In accordance with the established practice, it shall be the exclusive responsibility of the Commission to arrange the seating arrangements of the Meeting Rooms.

3. The Government shall also provide suitable lounges to be used for consultations by the Ministers and the Heads of State and Government.

4. The Government shall, at its expense, furnish and maintain in good condition, all the aforesaid rooms and offices in a manner suitable for the effective conduct of the Meetings.

5. The Government shall provide a Press Centre with multi-media facilities (telephone, fax and e-mail) for use by members of the press and delegations at their expense. The Press Centre shall have at least fifty (50) computers with internet connection out of which five (5) shall be in Portuguese while the rest shall be in Arabic, English and French. Five (5) printers should be networked to the computers in the Press Centre. Wireless network shall also be made available within the Press Centre and its

environs. The Press Centre shall have at least forty (40) free tables and chairs to facilitate the work of those wishing to work from their laptops or to write by hand.

6. Three (3) notice boards shall be placed in the Press Centre to allow the Commission to post notices of press conferences, briefings or special events for the information of the media.

B. EQUIPMENT, OFFICE SUPPLIES AND STATIONERY

- a) The Conference Hall for Plenary Meetings shall be equipped for simultaneous interpretation into Arabic, English, French and Portuguese. Two (2) booths for Kiswahili and Spanish shall also be organised for the Meeting of the Assembly. The Government shall also provide, at its expense, a speech time limit, display of speakers' list, and adequate facilities for Press, Radio and Television Services, as well as space for a Media Centre and required facilities.
- b) The Government shall, at its expense, provide and maintain in good condition the following other equipment:
- (i) Four (4) High-Volume photocopiers with a recto-verso facility, including sorting attachment, capable of producing ninety (90) to hundred twenty (120) copies per minute.
 - (ii) Four (4) Mid-Volume photocopiers with a recto-verso facility, capable of producing sixty (60) to eighty (80) copies per minute for the following offices:
 - Office of the Chairperson of the Union
 - Office of the Chairperson of the Commission
 - Office of the Deputy Chairperson of the Commission
 - Office of the Commissioners
 - Office of the Secretary General of the Commission
 - Office of the Legal Counsel
 - Office of the Protocol Division
 - Office of the Conference Coordinating Unit
 - Office of the Communication and Information Directorate.
An additional computer shall be provided for this office to facilitate press release drafting and processing in all African Union languages

- (iii) Six (6) collating tables.
- (iv) Thirty three (33) computers connected to twelve (12) network laser printers as follows:
 - Eight (8) English
 - Eight (8) French
 - Eight (8) Arabic
 - Eight (8) Portuguese
 - One (1) for the Director of Conferences

The Commission shall provide the necessary software for the Arabic and Portuguese language for installation on the computers in South Africa.

- c) The Government shall provide, at its expense, adequate audio recording equipment, together with the required technical personnel, for documentation purposes. The Commission shall provide the recording tapes, which shall remain its property.
- d) The Government shall provide, at its expense an electronic notice board, a PA system and a film projector to show African Union films or documentary.
- e) The Government shall ensure that the above listed equipment as well as the materials for the reproduction of working documents is ready and installed at least two (2) days before the commencement of the Meetings of the Permanent Representatives' Committee on 7 June 2015.
- f) The Government shall also make available, at its own expense, all the office supplies for the Meetings, such as printing and reproduction papers, toner, envelopes, paper-clips, folders, staplers and staples.

C. FLAGS, NAME PLATES, SECURITY AND CONFERENCE BADGES FOR THE MEETINGS

- a) The Government shall, at its expense, make available at least three (3) sets of national flags of all Member States and of the African Union for display at the Conference Centre as well as at the premises reserved for Heads of State and Government. Desk flags for the Plenary Hall and Committee Rooms shall also be provided by the Government at its expense.
- b) The Government shall provide, at its expense, pins and security badges for the Meetings of the Executive Council and the Assembly, which shall allow entry into the Conference Centre. These badges shall be issued in consultation with the Commission.

- c) The Commission, on its part, shall print and issue Conference badges which shall allow entry into the Conference Centre, ~~the Members of the Commission~~ and of the other AU Organs, the delegates, observers, technicians, the press and invited guests.
- d) The Commission shall be responsible for providing the nameplates of Member States, the Organs of the Union, the Regional Economic Communities (RECs) as well as the list of observers and invited guests.

D. TELECOMMUNICATION FACILITIES

- a) The Government shall install, at its expense, in the Offices of the Chairperson of the African Union, the Chairperson and the Deputy Chairperson of the Commission, international communication facilities (telephone and fax) as well as local communication facilities in all the other offices allocated to the Commission.
- b) The Government shall bear the cost of all communications made from the Offices of the Chairperson of the AU, the Chairperson and Deputy Chairperson of the Commission (telephone and fax).
- c) The Government shall, at its expense, install terminals for Internet facilities at the Conference Centre for use by the Staff of the Commission and the delegates.

ARTICLE II HOSPITALITY, TRANSPORTATION AND BANKING FACILITIES

In accordance with Rules 6(2) and 5(2) of the Rules of Procedure of the Executive Council and the Assembly, respectively, the Government shall be responsible for the following:

- a) **Hospitality and Per diem**
 - (i) The Government shall extend hospitality to the Chairperson, the Deputy Chairperson, the Commissioners and Staff of the Commission which, under the present Agreement, shall mean full board and lodging (accommodation, breakfast, lunch, dinner and non-alcoholic beverages) and local telephone calls. This hospitality shall not cover other expenses made on such items as alcoholic drinks, laundry, dry-cleaning, international telephone calls, and expenses incurred on their guests, from the dates of their arrival to the dates of their departure as stipulated in Articles XIII and XIV of this Agreement. However, the

Government shall bear the cost of all telephone communications made from the suite of the Chairperson.

- (ii) In addition, the Government shall pay twenty percent (20%) of per diem in United States Dollars to the Chairperson, the Deputy Chairperson, the Commissioners and to all Staff Members of the Commission (see list in the Annex) servicing the Meetings for nights spent in Pretoria and in Johannesburg in accordance with existing UN rates.

Furthermore, the Government shall also pay to all the Members of the Commission and Staff Members, the required amount of airport tax payable in South Africa (if applicable).

- (iii) It is understood that the Government shall also pay full per diem to the Members of the Commission and Staff Members concerned for each full night spent on the way to and from South Africa according to the itinerary to be agreed upon between the Parties (if applicable).

b) **Air Transportation**

- (i) The Government shall provide, at its expense, air tickets for the sector Addis Ababa – Johannesburg - Addis Ababa, Business Class for the Chairperson, the Deputy Chairperson and the Commissioners; and Economy class for the Staff Members of the Commission as listed in the Annex, provided that in accordance with the existing established practice, not more than sixty (60) Staff Members shall be required to travel in one (1) aircraft.
- (ii) The Commission will provide the Government with the schedules of travel of its various teams.

c) **Local Transportation**

- (i) The Government shall accord the Chairperson courtesies at the level of a Head of State. The Government shall further provide, at its expense, nine (9) limousines for the Deputy Chairperson and the Commissioners, and thirty-seven (37) cars for the African Union Special Representatives/Envoys and the Heads of other African Union Organs and the Chief Executives of the Regional Economic Communities (RECs).
- (ii) The Government shall provide sufficient buses to shuttle the Staff of the Commission from their hotels to the two Conference venues, the Department of International Relations and Cooperation in Pretoria and the Sandton International Convention Centre in Johannesburg.

- (iii) If the need arises, the Government shall place additional vehicles/minibuses at the disposal of the Commission.
- (iv) A transportation coordinator that will be on 24 hour duty and reachable, shall be assigned by the Government to liaise with the transportation coordinator designated by the Commission on transportation matters.

d) Transportation of Documents

The Government shall transport, at its expense, all the working documents from and to Addis Ababa.

e) Banking Facilities

The Government shall provide the Commission and delegates with the necessary foreign currency banking facilities at convenient points, preferably at the DIRCO Conference Centre, the Sandton International Convention Centre and/or hotels.

**ARTICLE III
HOTEL ACCOMMODATION**

- a) The Government shall also provide, at its expense, a large suite for the Chairperson and suitable suites for the Deputy Chairperson and the Commissioners. The Government shall also make available, at its expense, adequate single room accommodation for each of the Staff Members of the Commission servicing the Meetings.
- b) The Government will advise on appropriate accommodation, at preferential rates, for the freelance Conference Staff preferably in the same hotel where the Staff of the Commission are accommodated or within the vicinity of the Conference Centres, both in Pretoria and in Sandton.
- c) The Government shall endeavour to secure adequate and appropriate accommodation, at preferential rates, for delegates from all African Union Member States, African Union Special Representatives/Envoys, Officials of other African Union Organs and the Regional Economic Committees. The Government shall advise on availability of accommodation for Invited Guests.
- d) The Government shall not be responsible for the expenses for the accommodation in respect of (b) and (c) above.

**ARTICLE IV
MEDICAL FACILITIES**

1. The Government shall ensure that adequate medical facilities with qualified staff for first aid and during emergencies for all participants and for the Chairperson, Deputy Chairperson, Commissioners and Staff of the Commission shall be available at the venue of the Conferences in both Pretoria and Sandton.
2. For serious emergencies, the Government shall ensure immediate transportation to and facilitate admission of participants in an appropriate medical facility.
3. For serious emergencies with respect to the Chairperson, Deputy Chairperson, Commissioners and Staff of the Commission, the Government shall ensure immediate transportation and admission to a hospital designated by the Government, at the Government's expense.

**ARTICLE V
PROTECTION AND SECURITY**

1. The general security and safety arrangements shall be the exclusive responsibility of the Government. The Government shall provide such protection, as it may deem necessary for the security of the participants and the smooth running of the Meetings. Regarding the internal security of the Conference Centre, the Government security officers shall work in close cooperation with the African Union Head of Security and Safety Division and in accordance with the African Union established security procedure and practice.
2. Staff Members of the Commission, in particular, shall be given freedom of movement within the Conference Centre in the performance of their official duties so as to ensure the success of the Meetings.

**ARTICLE VI
LOCAL PERSONNEL**

The Government shall employ, at its expense, and place under the supervision of the Commission, a number of clerks, technicians for the reproduction and distribution of documents, ushers, messengers, telephone operators, cleaners and other manpower which may be required for the smooth conduct of the Meetings. Some of these staff are to be available two (2) days before the opening of the Meetings and two (2) days after the closure of the Assembly Session to help pack the documents and equipment. The local personnel mentioned herein should be able to communicate in English or French.



**ARTICLE VII
COORDINATION BETWEEN THE GOVERNMENT
AND THE COMMISSION**

The Government and the Commission shall each appoint a senior official responsible for the various aspects of the Meetings to act as focal points for their respective areas and to coordinate their activities in order to ensure the smooth running of the Meetings.

**ARTICLE VIII
PRIVILEGES AND IMMUNITIES**

1. The Government shall accord the Members of the Commission and Staff Members, the delegates and other representatives of Inter-Governmental Organizations attending the Meetings the privileges and immunities set forth in Sections C and D, Articles V and VI of the General Convention on the Privileges and Immunities of the OAU.
2. Without prejudice to the provisions of the preceding paragraph, all participants and persons performing duties in connection with the Meetings shall enjoy such facilities and courtesies as are necessary for the efficient performance of their duties.
3. The representatives of the Inter-Governmental Organizations and the Observers accredited to the African Union attending the Meetings shall enjoy the necessary immunities and privileges as provided for in the General Convention referred to in paragraph 1 above.
4. The Government shall provide all the necessary facilities for the entry and exit to and from South Africa to all those persons who are mentioned above and/or who are performing duties connected with the Meetings. Entry visas shall be granted to them preferably before the opening of the Meetings in accordance with the laws of South Africa and in accordance with the modalities for issuance of visas as contained in Annex II.
5. Staff members of the Commission and other organs of the AU holding AU Passport or Laissez-Passer shall not be required to obtain entry visa as per Decision AHG/OAU/AEC/Dec.1 (II) adopted by the Assembly of Heads of State and Government in Ouagadougou, Burkina Faso, in June 1998.

**ARTICLE IX
INDEMNITY AND CLAIMS**

1. The Government shall be responsible for dealing with any action, claim, or other demands against the Commission and its Officials arising out of:
 - (a) Injury or damage to persons or property in the conference or office premises provided by the Government;
 - (b) Transportation provided by the Government; and
 - (c) Personnel provided or arranged for by the Government for the Conference.
2. However, when the Government and the Commission accept that the damage caused resulted from a deliberate act or serious negligence on the part of the Commission or its Staff, the Government shall decline every responsibility in this respect. The Government and the Commission will assess and determine claims, accordingly.
3. The Government shall assume full responsibility for the repairs arising from any damage to the premises in the conference areas, the Department of International Relations and Cooperation Conference Centre, OR Tambo Building, Soutpansberg Road, Rietondale, Pretoria, and the Sandton International Convention Centre, Sandton, Johannesburg, as well as to furniture or equipment therein.
4. Without prejudice to the confidentiality of documents in the possession of the African Union, the Commission shall render reasonable assistance and shall exert its best efforts to make available to the Government relevant information, evidence and documents which are in possession or under the control of the African Union, to enable the Government to deal with any action, claim or demand contemplated in this Article.

**ARTICLE X
RECRUITMENT OF FREELANCE CONFERENCE STAFF**

The Commission shall be responsible for the selection, recruitment and payment of per diem and salaries of the entire freelance Conference Staff as well as the cost of their transportation to and from the Republic of South Africa.

**ARTICLE XI
MEETINGS WORKING DOCUMENTS**

The Commission shall be responsible for the preparation, reproduction and distribution of all the Meetings working documents in the four (4) African Union working languages.

**ARTICLE XII
PREPARATION OF THE MEETINGS**

The Commission shall send to South Africa, before the opening date of the Meetings, two African Union teams, at the expense of the Government, on an evaluation and advisory mission. The teams shall comprise not more than eight (8) members. The actual dates of this mission shall be agreed upon through consultations.

**ARTICLE XIII
ARRIVAL OF THE STAFF OF THE COMMISSION IN SOUTH AFRICA**


The Staff of the Commission assigned to service the Meetings shall arrive in Johannesburg and Pretoria, Republic of South Africa, as follows:

- Advance team of not more than eight (8) members shall arrive four (4) days before the opening of the Meetings, excluding the day of travel, i.e. 2 June 2015 in line with the commencement of the Permanent Representatives Committee meetings on 7 June 2015.
- The rest of the Staff Members, travelling in groups of not more than sixty (60) each, shall arrive one (1) day before the commencement of the Meetings, excluding days of travel, i.e. on 5 and 6 June 2015, at the latest.

**ARTICLE XIV
DEPARTURE OF THE STAFF OF THE COMMISSION FROM SOUTH AFRICA**

Depending on the availability of commercial/charter flights, the Staff of the Commission shall depart from South Africa one (1) or two (2) days after the closure of the Meetings i.e. 16 and 17 June 2015, at the latest.

**ARTICLE XV
SETTLEMENT OF DISPUTES**

1. The Parties shall endeavour to settle any dispute arising out of the interpretation, application or implementation of the provisions of this Agreement amicably through consultation or negotiations between the Parties.
 2. Any dispute that cannot be settled in accordance with paragraph (1) shall be referred to a tribunal for arbitration at the request of a Party.
- 

3. The tribunal shall consist of one (1) arbitrator appointed by each Party and a third person, appointed by both arbitrators shall be the chairperson of the tribunal.
4. If within sixty (60) days of the request for arbitration, a Party has not appointed an arbitrator or if within sixty (60) days of the appointment of the two (2) arbitrators, the third arbitrator has not been appointed; either Party may request the President of the Permanent Court of Arbitration to make the necessary appointment.
5. The decision of the majority of the tribunal shall be binding on the Parties.
6. The tribunal shall fix the procedure of the arbitration and shall give its decision within thirty (30) days following its constitution.
7. The tribunal shall provide for the reimbursements of its members and the distribution of expenses between the Parties.
8. The tribunal's decision on all questions of procedure and substance shall be final and, even if rendered in default of one (1) Party, be binding on both Parties.

ARTICLE XVI APPLICABLE LAW

The present Agreement shall be construed and interpreted in accordance with International Law.

ARTICLE XVII AMENDMENTS AND SUPPLEMENTARY ARRANGEMENTS

This Agreement may be amended by mutual consent of the Parties through an Exchange of Notes between the Parties through the Diplomatic Channels.

ARTICLE XVIII ENTRY INTO FORCE

The present Agreement shall enter into force on the date of signature by the competent authorities of the two Parties, the effective date of signature being the date of the last signature. It will terminate on 18 June 2015, unless otherwise extended by the Parties.



IN WITNESS WHEREOF, the duly authorised representatives of **the Government and the Commission** have signed the present Agreement.

Done at.....on this day ofTwo Thousand and Fifteen, for the Government of the Republic of South Africa and at.....on this.....day ofTwo Thousand and Fifteen for the Commission of the African Union.

.....
For the Government of the Republic of South Africa

.....
For the Commission of the African Union

Name:

Name:

Title:

Title:

Handwritten signature and initials in the bottom right corner of the page.

ANNEX I**(Host Agreement)****LIST OF STAFF TO SERVICE THE PERMANENT REPRESENTATIVES'
COMMITTEE,
THE EXECUTIVE COUNCIL AND ASSEMBLY SESSIONS****PRETORIA AND JOHANNESBURG, REPUBLIC OF SOUTH AFRICA
24 MAY TO – 15 JUNE 2015**

1. Dr NC Dlamini Zuma, Chairperson of the African Union Commission
2. Deputy Chairperson of the African Union Commission
3. Commissioner
4. Commissioner
5. Commissioner
6. Commissioner
7. Commissioner
8. Commissioner
9. Commissioner
10. Commissioner

Staff of the Chairperson of the African Union Commission**Staff of the Secretariat of the Secretary General**

1. Ambassador Jean Mfasoni

African Union Security**African Union Communications and Media Liaison****African Union Translation and Interpretation team**

Amerique "B"

ORGANISATION OF AFRICAN UNITY



ORGANISATION DE L'UNITE AFRICAINE

CAB/LEG/24.2/13

**GENERAL CONVENTION ON THE
PRIVILEGES AND IMMUNITIES OF
THE ORGANIZATION OF AFRICAN UNITY**

*for
[Signature]*

**GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES
OF THE ORGANIZATION OF AFRICAN UNITY**

CONSIDERING it necessary that the Organization of African Unity should enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purpose;

CONSIDERING it necessary that the representatives of the Members of the Organization of African Unity and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization;

NOW THEREFORE the Assembly adopted the following convention:

SECTION A

Article I

1. The Organization of African Unity shall possess juridical personality and shall have the capacity:
 - (a) To enter into contacts including the rights to acquire and dispose of movable and immovable property;
 - (b) To institute legal proceedings.

SECTION B

Article II

**Property, funds, Assets and Transactions of the
Organization of African Unity**

1. The Organization of African Unity its premises buildings, assets and other property wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case the Organization of African Unity has waived such immunity in accordance with the provisions of this General Convention. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

2. The premises and buildings of the Organization of African Unity shall be inviolable. The property and assets of the Organization of African Unity, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of interference, whether by executive, administrative, juridical or legislative action.
3. The archives of the Organization of African Unity and in general all documents belonging to it or held by it shall be inviolable wherever located.
4. Without being restricted by financial controls, regulations or moratoria of any kind;
 - (a) The Organization of African Unity may hold funds, gold or currency of any kind and operate accounts of any currency;
 - (b) The Organization of African Unity shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.
5. It is provided, however, that in exercising its right under paragraph 4 hereabove, the Organization of African Unity shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without prejudicing the interests of the Organization of African Unity.

Article III Tax exemptions

1. The Organization of African Unity, its income assets and properties shall be exempt:
 - (a) From all direct taxes, except that the Organization of African Unity will not claim exemption from taxes or dues which are no more than charges for public utility services;
 - (b) From import and export duties, prohibitions and quantitative restrictions on imports and exports in respect of articles imported or exported by the Organization of African Unity intended for and used for its official purpose. It is provided, however, that articles imported under such exemption shall not be sold with or without consideration in the country into which they were imported except under conditions agreed upon by the appropriate authorities of the Government of that country;

Jacobs pc

- (c) From customs duties, prohibitions and restrictions on imports and-exports in respect of its publications.
2. While the Organization of African Unity will not, as a general rule, claim exemption from excise duties and from transaction taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the Organization of African Unity is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will enact the necessary provisions or make appropriate administrative arrangements for the remission or refund of the amount of duty or tax so charged.

Article IV
Facilities in respect of communications

1. For its official communication and the transfer of all its documents the Organization of African Unity shall enjoy in the territory of each Member State treatment not less favourable than that accorded by the Government of that Member to any other international Organization as well as any Government, including its diplomatic mission, in matters of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications, as well as press rates for information to the press and radio. Official correspondence and other official communications of the Organization of African Unity shall not be subject to censorship.
2. The Organization of African Unity shall have the right to use codes and to despatch and receive its official correspondence, either by courier or in sealed bags which shall have the same immunities and privileges as diplomatic couriers and bags.

SECTION C

Article V
Representatives of Member States

1. Representatives of Member States to the principal and subsidiary institutions, as well as to the Specialized Commission of the Organization of African Unity, and to conferences convened by the Organization, shall, while exercising their functions and during their travel to and from the place of meetings, be accorded the following privileges and immunities;
 - (a) Immunity from personal arrest or detention and from any official interrogation as well as from inspection or seizure of their personal baggages;

- (b) Immunity from legal process of every kind in respect of words spoken, written or acts performed or votes cast by them for and in the exercise of their functions;
 - (c) Inviolability for all their papers and documents and the right to use codes and to receive papers or correspondence by courier or in sealed bags;
 - (d) Exemption in respect of themselves and their spouse from immigration restrictions, aliens registration and from national service obligations in the state they are visiting or through which they are passing for and in the exercise of their functions;
 - (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
 - (f) The same immunities and facilities in respect of their personal and official baggages as are accorded to diplomatic envoys;
 - (g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from exercise duties or sales taxes.
2. In order to secure, for the representatives of Members to the principal and subsidiary institutions as well as to Specialized Commission of the Organization of African Unity and to Conferences convened by the Organization, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken, written or votes cast, and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.
3. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary institutions as well as to the Specialized Commission of the Organization of African Unity and to Conferences convened by the Organization of African Unity are present in a State for the discharge of their duties shall not be considered as periods of residence.
4. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the Organization of African Unity. Consequently, a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the

immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

5. The provisions of paragraphs 1, 2, and 3 of Article V are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.
6. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

SECTION D


Article VI Officials of the Organization of African Unity

1. The Administration Secretary General will specify the category of officials to which the provisions of this Article and Article VIII shall apply. He shall submit these categories to the Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Government of Members.
2. Officials of the Organization of African Unity shall:
 - (a) Be immune from legal process in respect of words spoken, written and all acts performed by them in their official capacity;
 - (b) Be exempt from taxation on the salaries and emoluments paid to them by the Organization of African Unity;
 - (c) Be immune from national service obligations;
 - (d) Be immune, together with their spouses and relatives residing with and dependent on them, from immigration restrictions and alien registration and finger printing;
 - (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
 - (f) Be given, together with their spouses and relatives residing with and dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

- (g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.
3. In addition to the immunities and privileges specified in paragraph 2 of this Article, the Administrative Secretary General and all Assistant Secretaries General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
4. Privileges and immunities are granted to officials in the interests of the Organization of African Unity and not for the personal benefit of the individuals themselves. The Administrative Secretary General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Organization of African Unity. In the case of the Administrative Secretary General, the Council of Ministers shall have the right to waive immunity.
5. The Organization of African Unity shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VII

Experts on missions for the Organization of African Unity

1. Experts (other than officials coming within the scope of Article VI) performing missions for the Organization of African Unity shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:
- (a) Immunity from personal arrest or detention as well as any official interrogation and from inspections or seizure of their personal baggage;
- (b) In respect of words spoken, written or votes cast and acts done by them in the course of the performance of their mission; immunity from legal process of every kind; the said immunities from legal process continue to be accorded notwithstanding that persons concerned are no longer employed on missions for the Organization of African Unity;
- (c) Inviolability for all papers and documents;
- 

- (d) For the purpose of their communications with the Organization of African Unity, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
 - (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
 - (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.
2. Privileges and immunities are granted to experts in the interests of the Organization of African Unity and not for the personal benefit of the individuals themselves. The Administrative Secretary General shall have the right and the duty to waive the immunities of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the Organization of African Unity.


Article VIII
Organization of African Unity Laissez-Passer

1. The Organization of African Unity may issue Organization of African Unity Laissez-Passer to its officials. These Laissez-Passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of paragraph 2 of this Article.
2. Applications for visas (where required) from the holders of Organization of African Unity Laissez-Passer, when accompanied by a certificate that they are travelling on the business of the Organization of African Unity, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.
3. Similar facilities to these specified in paragraph 2 of this Article shall be accorded to experts and other persons who, though not the holders of Organization of African Unity Laissez-Passer, have a certificate that they are travelling on the business of the Organization of African Unity.
4. The Administrative Secretary General, Assistant Secretaries General and Directors travelling on Organization of African Unity Laissez-Passer on the business of the Organization of African Unity shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION E**Article IX
Settlements of disputes**

1. The Organization of African Unity shall make provisions for appropriate modes of settlement of:
 - (a) Disputes arising out of contracts or other disputes of a private law character to which the Organization of African Unity is a party;
 - (b) Disputes involving any official of the Organization of African Unity who by reason of his official position enjoys immunity, if immunity has not been waived by the Administrative Secretary General;
2.
 - (a) All differences arising out of the interpretation and/or application of the present Convention shall be referred for arbitration to the Commission of Mediation, Conciliation and Arbitration, unless in any case it is agreed by the parties to have recourse to another mode of settlement;
 - (c) All differences which may arise between the Organization of African Unity on the one hand, and a Member State on the other hand, with respect to the interpretation and/or application of the present Convention; failing settlement by negotiation or any other agreed method of settlement shall be submitted to a tribunal of three arbitrators; one to be named by the Administrative Secretary General of the Organization, one to be named by the Member State, the third to be chosen by the two arbitrators, and/or if they should fail to agree upon the third, then the third shall be chosen by the President of the Commission of Mediation, Conciliation and Arbitration.

**Article X
Final Provisions**

1. This Convention is submitted to every Member of the Organization of African Unity for accession.
 2. The accession provided for in paragraph 1 of this Article shall be effected by the signature of the Heads of State and Government; this signature implies the immediate entering into force of the General Convention on the Privileges and Immunities of the Organization of African Unity.
- 

3. The Administrative Secretary General may conclude with any Member or Members supplementary agreements adjusting the provisions of this Convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the Assembly.

IN FAITH WHEREOF, WE, the Heads of State and Government have signed this Convention, done in the city of Accra, Ghana, this 25th day of October 1965.

ALGERIA (Signed)	MALAWI (Signed)
BURUNDI (Signed)	MALI (Signed)
CAMEROON (Signed)	MAURITANIA (Signed)
CENTRAL AFRICAN REPUBLIC (Signed)	MOROCCO (Signed)
CHAD	NIGER
CONGO (Brazzaville) (Signed)	NIGERIA (Signed)
CONGO (Kinshasa) (Signed)	RWANDA (Signed)
DAHOMEY	SENEGAL (Signed)
ETHIOPIA (Signed)	SIERRA LEONE
GABON	SOMALIA (Signed)
GAMBIA (Signed)	SUDAN (Signed)
GHANA (Signed)	TANGANYIKA
GUINEA (Signed)	TOGO
IVORY COAST	TUNISIA (Signed)
KENYA (Signed)	UGANDA (Signed)
LIBERIA (Signed)	UNITED ARAB REPUBLIC (Signed)
LIBYA (Signed)	UPPER VOLTA
MADAGASCAR	ZAMBIA (Signed)

Amendment "C"

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT 37 OF 2001
[ASSENTED TO 22 NOVEMBER 2001] [DATE OF COMMENCEMENT: 28 FEBRUARY 2002]
(English text signed by the President)

as amended by

Diplomatic Immunities and Privileges Amendment Act 35 of 2008

Regulations under this Act

RECOGNITION OF THE SOUTHERN AFRICAN CUSTOMS UNION (SACU) (GN 1012 In GG 32655 of 30 October 2008)

ACT

To make provision regarding the immunities and privileges of diplomatic missions and consular posts and their members, of heads of states, special envoys and certain representatives, of the United Nations, and its specialised agencies, and other international organisations and of certain other persons; to make provision regarding immunities and privileges pertaining to international conferences and meetings; to enact into law certain conventions; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

- 1 Definitions
 - 2 Conventions have force of law
 - 3 Immunities and privileges of diplomatic missions and consular posts, and of members of such missions and posts
 - 4 Immunities and privileges of heads of state, special envoys and certain representatives
 - 5 Immunities and privileges of the United Nations, specialised agencies and other international organisations
 - 6 Immunities and privileges pertaining to international conferences or meetings convened in the Republic
 - 7 Conferment of immunities and privileges
 - 8 Waiver of immunities and privileges
 - 9 Register of persons entitled to immunities or privileges
 - 10 Restriction on immunities, privileges and exemptions
 - 11 Adjustment of loss of revenue to municipalities and statutory public utility organisations
 - 12 Acquisition, construction, relocation, renovation, replacement, extension or lease of immovable property in the Republic
 - 13 Liability insurance requirements
 - 14 Regulations
 - 15 Offences and penalties
 - 16 Repeal of laws
 - 17 Short title and commencement
- Schedule 1 - Vienna Convention on Diplomatic Relations, 1961
Schedule 2 - Vienna Convention on Consular Relations, 1963
Schedule 3 - Convention on the Privileges and Immunities of the United Nations, 1946
Schedule 4 - Convention on the Privileges and Immunities of the Specialised Agencies, 1947

1 Definitions

In this Act, unless the context indicates otherwise-

'Director-General' means the Director-General: Foreign Affairs;

'Minister' means the Minister of Foreign Affairs;

'municipality' means a municipality established in terms of Chapter 2 of the Local Government Municipal Structures Act, 1998 (Act 117 of 1998);

'organisation' means an intergovernmental organisation of which two or more states or governments are members and which the Minister has recognised for the purposes of this Act;

'regulation' means a regulation made under section 13; .

'special envoy or representative' means a person duly authorised by the sending state, government or organisation to undertake a special mission or task in the Republic on behalf of such state, government or organisation;

'specialised agency' means any agency contemplated in paragraph (ii) of section 1 of Article 1 of the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, and which the Minister has recognised for purposes of this Act;

'the Convention on the Privileges and Immunities of the Specialised Agencies, 1947' means the Convention on the Privileges and Immunities of the Specialised Agencies, adopted on 21 November 1947, as may be applicable in the Republic in accordance with the reservations made by South Africa upon its accession thereto and which is set out in Schedule 4 to this Act;

'the Convention on the Privileges and Immunities of the United Nations, 1946' means the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946, as may be applicable in the Republic in accordance with the reservations made by South Africa upon its accession thereto and which is set out in Schedule 3 to this Act;

'the Conventions' means the Convention on the Privileges and Immunities of the United Nations, 1946, the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963;

'the Vienna Convention on Consular Relations, 1963' means the Vienna Convention on Consular Relations, 1963, signed at Vienna on 24 April 1963, and which is set out in Schedule 2 to this Act;

'the Vienna Convention on Diplomatic Relations, 1961' means the Vienna Convention on Diplomatic Relations, 1961, signed at Vienna on 18 April 1961, and which is set out in Schedule 1 to this Act;

'this Act' includes the regulations.

2 Conventions have force of law

(1) Subject to the provisions of this Act, the Conventions have the force of law in the Republic.

(2) For the purposes of the Conventions-

(a) 'grave crime' means any offence for which a person may on conviction be sentenced to imprisonment for five years or more; and

(b) 'member of a family' means-

(i) the spouse;

(ii) any dependant child under the age of 18 years;

(iii) any other dependant family member, officially recognised as such by the sending State or the United Nations, a specialised agency or an international organisation; and

(iv) the life partner, officially recognised as such by the sending State or the United Nations, a specialised agency or an international organisation,

and, if applicable, 'spouses and relatives dependant' has the same meaning.

[Para. (b) substituted by s. 1 of Act 35 of 2008.]

3 Immunities and privileges of diplomatic missions and consular posts, and of members of such missions and posts

(1) The Vienna Convention on Diplomatic Relations, 1961, applies to all diplomatic missions and members of such missions in the Republic.

(2) The Vienna Convention on Consular Relations, 1963, applies to all consular posts and members of such posts in the Republic.

4 Immunities and privileges of heads of state, special envoys and certain representatives

(1) A head of state is immune from the criminal and civil jurisdiction of the courts of the Republic, and enjoys such privileges as-

- (a) heads of state enjoy in accordance with the rules of customary international law;
- (b) are provided for in any agreement entered into with a state or government whereby immunities and privileges are conferred upon such a head of state; or
- (c) may be conferred on such head of state by virtue of section 7 (2).

(2) A special envoy or representative from another state, government or organisation is immune from the criminal and civil jurisdiction of the courts of the Republic, and enjoys such privileges as-

- (a) a special envoy or representative enjoys in accordance with the rules of customary international law;
- (b) are provided for in any agreement entered into with a state, government or organisation whereby immunities and privileges are conferred upon such special envoy or representative; or
- (c) may be conferred on him or her by virtue of section 7 (2).

(3) The Minister must by notice in the *Gazette* recognise a special envoy or representative for the purposes of subsection (2).

5 Immunities and privileges of United Nations, specialised agencies and other international organisations

(1) The Convention on the Privileges and Immunities of the United Nations, 1946, applies to the United Nations and its officials in the Republic.

(2) The Convention on the Privileges and Immunities of the Specialised Agencies, 1947, applies to any specialised agency and its officials in the Republic.

(3) Any organisation recognised by the Minister for the purposes of this section and any official of such organisation enjoy such privileges and immunities as may be provided for in any agreement entered into with such organisation or as may be conferred on them by virtue of section 7 (2).

(4) Any organisation contemplated in this section is vested with the legal capacity of a body corporate in the Republic to the extent consistent with the instrument creating it.

6 Immunities and privileges pertaining to international conferences or meetings convened in Republic

(1) The officials and experts of the United Nations, of any specialised agency and of any organisation, and representatives of any state, participating in an international conference or meeting convened in the Republic enjoy for the duration of the conference or meeting such privileges and immunities as-

- (a) are specifically provided for in the Convention on the Privileges and Immunities of the United Nations, 1946, or the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, as the case may be, in respect of the participation in conferences and meetings;
- (b) are specifically provided for in any agreement entered into for this purpose; or

(c) may be conferred on any of them by virtue of section 7 (2).
(2) The Minister must by notice in the *Gazette* recognise a specific conference or meeting for the purposes of subsection (1).

7 Conferment of immunities and privileges

(1) Any agreement whereby immunities and privileges are conferred to any person or organisation in terms of this Act must be published by notice in the *Gazette*.

(2) The Minister may in any particular case if it is not expedient to enter into an agreement as contemplated in subsection (1) and if the conferment of immunities and privileges is in the interest of the Republic, confer such immunities and privileges on a person or organisation as may be specified by notice in the *Gazette*.

8 Waiver of immunities and privileges

(1) A sending State, the United Nations, any specialised agency or organisation may waive any immunity or privilege which a person enjoys under this Act.

(2) For the purposes of subsection (1), any waiver by the head, or by any person who performs the functions of the head, of-

- (a) a mission;
- (b) a consular post;
- (c) an office of the United Nations;
- (d) an office of a specialised agency; or
- (e) an organisation,

must be regarded as being a waiver by the state, the United Nations, the specialized agency or the organisation in question.

(3) For the purposes of this section, a waiver must always be express and in writing.

9 Register of persons entitled to immunities or privileges

(1) The Minister must keep a register in which there must be registered the names of all the persons who enjoy-

- (a) immunity from the civil and criminal jurisdiction of the courts of the Republic; or
- (b) immunities and privileges in accordance with the Conventions or in terms of any agreement contemplated in section 7.

(2) The Minister must cause a complete list of all persons on the register to be published on the Website of the Department of Foreign Affairs, and must cause the list to be updated as frequently as may be necessary, and made publicly available.

[Sub-s. (2) substituted by s. 2 of Act 35 of 2008.]

(3) If any question arises as to whether or not any person enjoys any immunity or privilege under this Act or the Conventions, a certificate under the hand or issued under the authority of the Director-General stating any fact relating to that question, is *prima facie* evidence of that fact.

[Sub-s. (3) substituted by s. 2 of Act 35 of 2008.]

10 Restriction on immunities, privileges and exemptions

If it appears at any time to the Minister-

- (a) that the immunities and privileges accorded to a mission of the Republic in the territory of any state, or to any person connected with any such mission, are less than those conferred in the Republic on the mission of that state, or on any person connected with that mission; or
- (b) that the exemptions granted to the Government of the Republic in the territory of any state are less than those granted by the Minister to that state,

the Minister may withdraw so much of the immunities, privileges and exemptions so accorded or granted by him or her as appears to him or her to be proper.

11 Adjustment of loss of revenue to municipalities and statutory public utility organisations

The loss of revenue caused to any municipality or statutory public utility organisation by reason of this Act relating to exemptions from taxation, must be made good to such municipality or organisation out of funds approved by Parliament for that purpose.

12 Acquisition, construction, relocation, renovation, replacement, extension or lease of immovable property in Republic

(1) All foreign missions or consular posts, the United Nations and all specialised agencies or organisations referred to in this Act, must submit a written request to the Director-General for acquiring, constructing, relocating, renovating, replacing, extending or leasing immovable property in the Republic in the name of or on behalf of-

- (a) the mission or post or its government;
- (b) the United Nations;
- (c) the specialised agency or organisation in question;
- (d) any person referred to in section 4 or 5; or
- (e) any representative contemplated in the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963.

(2) Any such request must consist of a narrative and graphic description of, and indicate the reasons for, the proposed acquisition, construction, relocation, renovation, replacement, extension or leasing.

(3) No deed of transfer of land may be registered in accordance with the Deeds Registries Act, 1937 (Act 47 of 1937), in the name of any such government, mission or post, the United Nations or any such specialised agency, organisation, person or representative unless the Director-General has informed the Registrar of Deeds in writing that the property has been recognised for the use of an embassy, chancellery, legation, office or official residence and that the Director-General approves of such registration.

(4) Diplomatic missions established in the Republic in accordance with the provisions of the Vienna Convention on Diplomatic Relations, 1961, or other rules of customary international law, must be located in Pretoria or, during sittings of Parliament, in Cape Town.

(5) Despite subsection (4), the Minister may approve that a section of the diplomatic mission may be located elsewhere.

13 Liability insurance requirements

The Minister must prescribe by regulation liability insurance requirements which have to be met by any person who enjoys immunities or privileges under this Act or in terms of the Conventions.

14 Regulations

The Minister may make regulations regarding any matter which must be prescribed or which the Minister deems it necessary or expedient to prescribe in order to carry out or give effect to the provisions of this Act or of the Conventions.

15 Offences and penalties

(1) Any person who willfully or without the exercise of reasonable care issues, obtains or executes any legal process against a person who enjoys immunity under this Act or in terms of the Conventions, whether as party, attorney or officer concerned with issuing or executing such process, is guilty of an offence.

(2) Any person who contravenes subsection (1) or who willfully or without the exercise of reasonable care commits any other offence which has the effect of infringing the inviolability of any person contemplated in subsection (1), or of his or her property or of the premises occupied by him or her, is liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

16 Repeal of laws and saving

(1) The Diplomatic Immunities and Privileges Act, 1989 (Act 74 of 1989), and the Diplomatic Immunities and Privileges Amendment Act, 1992 (Act 56 of 1992), are hereby repealed.

(2) Anything done under a provision of any law repealed by subsection (1) and which could have been done under a provision of this Act, must be regarded as having been done under the latter provision.

17 Short title and commencement

This Act is called the Diplomatic Immunities and Privileges Act, 2001, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

VIENNA CONVENTION ON DIPLOMATIC RELATIONS, 1961

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the 'head of the mission' is the person charged by the sending State with the duty of acting in that capacity;
- (b) the 'members of the mission' are the head of the mission and the members of the staff of the mission;
- (c) the 'members of the staff of the mission' are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the 'members of the diplomatic staff' are the members of the staff of the mission having diplomatic rank;
- (e) a 'diplomatic agent' is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the 'members of the administrative and technical staff' are the members of the

staff of the mission employed in the administrative and technical service of the mission;

- (g) the 'members of the service staff' are the members of the staff of the mission in the domestic service of the mission;
- (h) a 'private servant' is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist, *inter alia*, in:

- (a) representing the sending State in the receiving State;
- (b) protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;
- (c) negotiating with the Government of the receiving State;
- (d) ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State;
- (e) promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2 Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1 The sending State must make certain that the *agrément* of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2 The receiving State is not obliged to give reasons to the sending State for a refusal of *agrément*.

Article 5

1 The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2 If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a *chargé d'affaires ad interim* in each State where the head of mission has not his permanent seat.

3 A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 6

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 7

Subject to the provisions of Articles 5, 8, 9 and 11, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Article 8

1 Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2 Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3 The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 9

1 The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2 If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this Article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 10

1 The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of:

- (a) the appointment of members of the mission, their arrival and their final departure or the termination of their functions with the mission;
- (b) the arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;
- (c) the arrival and final departure of private servants in the employ of persons referred to in subparagraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;
- (d) the engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2 Where possible, prior notification of arrival and final departure shall also be given.

Article 11

1 In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2 The receiving State may equally, within similar bounds and on a nondiscriminatory basis, refuse to accept officials of a particular category.

Article 12

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 13

1 The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving

State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State, which shall be applied in a uniform manner.

2 The order of presentation of credentials or of a true copy thereof will be determined by the date and time of the arrival of the head of the mission.

Article 14

1 Heads of mission are divided into three classes, namely:

- (a) that of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
- (b) that of envoys, ministers and internuncios accredited to Heads of State;
- (c) that of chargés d'affaires accredited to Ministers for Foreign Affairs.

2 Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 15

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 16

1 Heads of mission shall take precedence in their respective classes in the order of the date and time of taking up their functions in accordance with Article 13.

2 Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3 This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 17

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 18

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 19

1 If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a chargé d'affaires *ad interim* shall act provisionally as head of the mission. The name of the chargé d'affaires *ad interim* shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2 In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 20

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 21

1 The receiving State shall either facilitate the acquisition on its territory, in accordance

with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2 It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 22

1 The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

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

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

Article 23

1 The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2 The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 25

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 26

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 27

1 The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

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

3 The diplomatic bag shall not be opened or detained.

4 The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5 The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6 The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities

therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7 A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 28

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30

1 The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2 His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

Article 31

1 A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2 A diplomatic agent is not obliged to give evidence as a witness.

3 No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under subparagraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4 The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 32

1 The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2 Waiver must always be express.

3 The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4 Waiver of immunity from jurisdiction in respect of civil or administrative proceedings

shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary.

Article 33

1 Subject to the provisions of paragraph 3 of this Article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2 The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.

3 A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4 The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5 The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 34

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

Article 35

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 36

1 The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his family

forming part of his household, including articles intended for his establishment.

2 The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 37

1 The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2 Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3 Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4 Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1 Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2 Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 39

1 Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2 When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time,

even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3 In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4 In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 40

1 If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2 In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3 Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4 The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

Article 41

1 Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2 All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

3 The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 42

A diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 43

The function of a diplomatic agent comes to an end, *inter alia*:

- (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end;
- (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of Article 9, it refuses to recognize the diplomatic agent as a member of the mission.

Article 44

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

- (a) the receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;
- (b) the sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 46

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 47

1 In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2 However, discrimination shall not be regarded as taking place:

- (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;
- (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 48

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 49

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 50

The present Convention shall remain open for accession by any State belonging to any of

the four categories mentioned in Article 48. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 51

1 The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2 For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 52

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 48:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 48, 49 and 50;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 51.

Article 53

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

DONE at Vienna, this eighteenth day of April one thousand nine hundred and sixty-one.

Schedule 2

VIENNA CONVENTION ON CONSULAR RELATIONS

Article 1

Definitions

1 For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) 'consular post' means any consulate-general, consulate, vice-consulate or consular agency;
- (b) 'consular district' means the area assigned to a consular post for the exercise of consular functions;
- (c) 'head of consular post' means the person charged with the duty of acting in that capacity;
- (d) 'consular officer' means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) 'consular employee' means any person employed in the administrative or technical service of a consular post;
- (f) 'member of the service staff' means any person employed in the domestic service of a consular post;
- (g) 'members of the consular post' means consular officers, consular employees and members of the service staff;
- (h) 'members of the consular staff' means consular officers, other than the head of a consular post, consular employees and members of the service staff;

- (i) 'member of the private staff' means a person who is employed exclusively in the private service of a member of the consular post;
- (j) 'consular premises' means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) 'consular archives' includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2 Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3 The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

**CHAPTER I
CONSULAR RELATIONS IN GENERAL
SECTION I**

ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

Article 2

Establishment of consular relations

- 1 The establishment of consular relations between States takes place by mutual consent.
- 2 The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.
- 3 The severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations.

Article 3

Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4

Establishment of a consular post

1 A consular post may be established in the territory of the receiving State only with that State's consent.

2 The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3 Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4 The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5 The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post, elsewhere than at the seat thereof.

Article 5

Consular functions

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the

- master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 6

Exercise of consular functions outside the consular district

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

Article 7

Exercise of consular functions in a third State

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

Article 8

Exercise of consular functions on behalf of a third State

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

Article 9

Classes of heads of consular posts

1 Heads of consular posts are divided into four classes, namely:

- (a) consuls-general;
- (b) consuls;
- (c) vice-consuls;
- (d) consular agents.

2 Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10

Appointment and admission of heads of consular posts

1 Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2 Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

Article 11

The consular commission or notification of appointment

1 The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2 The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3 If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this Article.

Article 12

The exequatur

1 The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.

2 A State which refuses to grant an exequatur is not obliged to give to the sending State reasons for such refusal.

3 Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur.

Article 13

Provisional admission of heads of consular posts

Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

Article 14

Notification to the authorities of the consular district

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15

Temporary exercise of the functions of the head of a consular post

1 If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2 The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3 The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4 When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16

Precedence as between heads of consular posts

1 Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.

2 If, however, the head of a consular post before obtaining the exequatur is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the exequatur.

3 The order of precedence as between two or more heads of consular posts who obtained the exequatur or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.

4 Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.

5 Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6 Heads of consular posts shall have precedence over consular officers not having that status.

Article 17

Performance of diplomatic acts by consular officers

1 In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2 A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18

Appointment of the same person by two or more states as a consular officer

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

Article 19

Appointment of members of consular staff

1 Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2 The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.

3 The sending State may, if required by its laws and regulations, request the receiving State to grant an exequatur to a consular officer other than the head of a consular post.

4 The receiving State may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.

Article 20

Size of the consular staff

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

Article 21

Precedence as between consular officers of a consular post

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

Article 22

Nationality of consular officers

1 Consular officers should, in principle, have the nationality of the sending State.

2 Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.

3 The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 23

Persons declared 'non grata'

1 The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2 If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the exequatur from the person concerned or cease to consider him as a member of the consular staff.

3 A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.

4 In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

Article 24

Notification to the receiving State of appointments, arrivals and departures

1 The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

- (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;

- (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
- (c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;
- (d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2 When possible, prior notification of arrival and final departure shall also be given.

SECTION II END OF CONSULAR FUNCTIONS

Article 25

Termination of the functions of a member of a consular post

The functions of a member of a consular post shall come to an end *inter alia*:

- (a) on notification by the sending State to the receiving State that his functions have come to an end;
- (b) on withdrawal of the exequatur;
- (c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

Article 26

Departure from the territory of the receiving State

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

Article 27

Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances

1 In the event of the severance of consular relations between two States:

- (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
- (b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
- (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

2 In the event of the temporary or permanent closure of a consular post, the provisions of subparagraph (a) of paragraph 1 of this Article shall apply. In addition,

- (a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular

- post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
- (b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of subparagraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

SECTION I

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

Article 28

Facilities for the work of the consular post

The receiving State shall accord full facilities for the performance of the functions of the consular post.

Article 29

Use of national flag and coat-of-arms

1 The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.

2 The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.

3 In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

Article 30

Accommodation

1 The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.

2 It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31

Inviolability of the consular premises

1 Consular premises shall be inviolable to the extent provided in this Article.

2 The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3 Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4 The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to

avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32

Exemption from taxation of consular premises

1 Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2 The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33

Inviolability of the consular archives and documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 34

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35

Freedom of communication

1 The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.

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

3 The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4 The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5 The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6 The sending State, its diplomatic missions and its consular posts may designate

consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7 A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

Communication and contact with nationals of the sending state

1 With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2 The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Article 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;
- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

- (c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38

Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;
(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

Article 39

Consular fees and charges.

1 The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2 The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

SECTION II.

**FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER
CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST**

Article 40

Protection of consular officers

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41

Personal inviolability of consular officers

1 Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.

2 Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

3 If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43

Immunity from jurisdiction

1 Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.

2 The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:

- (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 44

Liability to give evidence

1 Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2 The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3 Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

Waiver of privileges and immunities

1 The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2 The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3 The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4 The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46

Exemption from registration of aliens and residence permits

1 Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2 The provisions of paragraph 1 of this Article shall not, however, apply to any consular

employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

Article 47

Exemption from work permits

1 Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2 Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

Article 48

Social security exemption

1 Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2 The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving State; and
- (b) that they are covered by the social security provisions which are in force in the sending State or a third State.

3 Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4 The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49

Exemption from taxation

1 Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
- (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
- (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
- (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
- (e) charges levied for specific services rendered;
- (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2 Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3 Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50

Exemption from customs duties and inspection

1 The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2 Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3 Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in subparagraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

Estate of a member of the consular post or of a member of his family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52

Exemption from personal services and contributions

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53

Beginning and end of consular privileges and immunities

1 Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.

2 Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.

3 When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4 However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5 In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54

Obligations of third States

1 If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2 In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3 Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4 The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

Article 55

Respect for the laws and regulations of the receiving State

1 Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2 The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3 The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

Special provisions concerning private gainful occupation

1 Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2 Privileges and immunities provided in this Chapter shall not be accorded:

- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
- (b) to members of the family of a person referred to in subparagraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

General provisions relating to facilities, privileges and immunities

1 Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2 Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.

3 Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.

4 The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

Article 59

Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60

Exemption from taxation of consular premises

1 Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2 The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62

Exemption from customs duties

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 63

Criminal proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64

Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65

Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66

Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

Article 67

Exemption from personal services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68

Optional character of the institution of honorary consular officers

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER IV

GENERAL PROVISIONS

Article 69

Consular agents who are not heads of consular posts

1 Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2 The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

Article 70

Exercise of consular functions by diplomatic missions

1 The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2 The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3 In the exercise of consular functions a diplomatic mission may address:

- (a) the local authorities of the consular district;
- (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4 The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

Nationals or permanent residents of the receiving State

1 Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State

- 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 interest 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 interest of the Organization.

ANNEX III

INTERNATIONAL CIVIL AVIATION ORGANIZATION

The standard clauses shall operate in respect to the International Civil Aviation Organization (hereinafter called 'the Organization') 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 the President of 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) Immunity from legal process from every kind in respect of words spoken or written or acts done by them in the performance of their official functions, 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.
- (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 of the Organization in the interest 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 interest of the Organization.

ANNEX IV

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

The standard clauses shall operate in respect to the United Nations Educational Scientific and Cultural Organization (hereinafter called 'the Organization') subject to the following provisions:

shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2 Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72

Non-discrimination

1 In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2 However, discrimination shall not be regarded as taking place:

- (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;
- (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73

Relationship between the present convention and other international agreements

1 The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

2 Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER V

FINAL PROVISIONS

Article 74

Signature

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76

Accession

The present Convention shall remain open for accession by any State belonging to any of

the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77

Entry into force

1 The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2 For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 78

Notifications by the Secretary-General

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 77.

Article 79

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

Schedule 3

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, ADOPTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 13 FEBRUARY 1946

Whereas Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes and

Whereas Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization

Consequently the General Assembly by the Resolution adopted on the 13 February 1946, approved the following Convention and proposed it for accession by each Member of the United Nations.

Article I

Juridical Personality

SECTION 1. The United Nations shall possess juridical personality. It shall have the capacity:

- (a) To contract;

- (b) To acquire and dispose of immovable and movable property;
- (c) To institute legal proceedings.

Article II

Property, funds and assets

SECTION 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

SECTION 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

SECTION 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

SECTION 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

SECTION 7. The United Nations, its assets, income and the property shall be:

- (a) Exempt from all direct taxes, it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
- (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;
- (c) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

SECTION 8. While the United Nations will not, as a general rule, claim exemptions from excise duties and from taxes on the sale of the movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making import purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

Facilities in respect of communications

SECTION 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities' rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

SECTION 10. The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

The representatives of members

SECTION 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during the journey to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;
- (g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

SECTION 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

SECTION 13. Where the incidence of any form of taxation depends upon residence periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

SECTION 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

SECTION 15. The provisions of Sections 11, 12 and 13 are not applicable as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

SECTION 16. In this article the expression 'representatives' shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

Officials

SECTION 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

SECTION 18. Officials of the United Nations shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations;
- (c) Be immune from national service obligations;
- (d) Be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;
- (e) Be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;
- (f) Be given, together with their spouses and relatives dependant on them, the same repatriation facilities in time of international crisis as diplomatic envoys;
- (g) Have the right to import free of duty their furniture and effects at the time of first taking up the post in the country of question.

SECTION 19. In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

SECTION 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity.

SECTION 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

Experts on missions for the United Nations

SECTION 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
- (b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;
- (c) Inviolability for all papers and documents;

- (d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

SECTION 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

United Nations 'laissez-passer'

SECTION 24. The United Nations may issue United Nations *laissez-passer* to its officials. These *laissez-passer* shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provisions of section 25.

SECTION 25. Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

SECTION 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

SECTION 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

SECTION 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

Settlement of Disputes

SECTION 29. The United Nations shall make provisions for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
- (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Final Article

SECTION 31. This convention is submitted to every Member of the United Nations for accession.

SECTION 32. Accession shall be affected by deposit of an instrument with the Secretary-General of the United Nations and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

SECTION 33. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.

SECTION 34. It is understood that, when an instrument of accession is deposited on behalf of

any Member, the Member will be in a position under its own law to give effect to the terms of this convention.

SECTION 35. This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

SECTION 36. The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly.

Schedule 4

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, 1947

Whereas the General Assembly of the United Nations adopted on 13 February 1946 a resolution contemplating the unification as far as possible of the privileges and immunities enjoyed by the United Nations and by the various specialized agencies; and

Whereas consultations concerning the implementation of the aforesaid resolution have taken place between the United Nations and the specialized agencies;

Consequently, by the resolution 179 (II) adopted on 21 November 1947, the General Assembly has approved the following Convention, which is submitted to the specialized agencies for acceptance and to every Member of the United Nations and to every other State member of one or more of the specialized agencies for accession.

Article I

Definitions and scope

Section I

In this Convention:

- (i) The words 'standard clauses' refer to the provisions of articles II to IX.
- (ii) The words 'specialized agencies' mean:
 - (a) The International Labour Organization;
 - (b) The Food and Agriculture Organization of the United Nations;
 - (c) The United Nations Educational, Scientific and Cultural Organization;
 - (d) The International Civil Aviation Organization;
 - (e) The International Monetary Fund;
 - (f) The International Bank for Reconstruction and Development;
 - (g) The World Health Organization;
 - (h) The Universal Postal Union;
 - (i) The International Telecommunications Union; and
 - (j) Any other agency in relationship with the United Nations in accordance with Articles 57 and 63 of the Charter.
- (iii) The word 'Convention' means, in relation to any particular specialized agency, the standard clauses as modified by the final (or revised) text of the annex transmitted by that agency in accordance with sections 36 and 38.
- (iv) For the purposes of article III, the words 'property and assets' shall also include property and funds administered by a specialized agency in furtherance of its constitutional functions.
- (v) For the purposes of articles V and VII, the expression 'representatives of

members' shall be deemed to include all representatives, alternates, advisers, technical experts and secretaries of delegations.

- (vi) In sections 13, 14, 15 and 25, the expression 'meetings convened by a specialized agency' means meeting: (1) of its assembly and of its executive body (however designated), and (2) of any commission provided for its constitution; (3) of any international conference convened by it; and (4) of any committee of any of these bodies.
- (vii) The term 'executive head' means the principal executive official of the specialized agency in question, whether designated 'Director-General' or otherwise.

Section 2

Each State party to this Convention in respect of any specialized agency to which this Convention has become applicable in accordance with section 37 shall accord to, or in connection with, that agency the privileges and immunities set forth in the standard clauses on the conditions specified therein, subject to any modification of those clauses contained in the provisions of the final (or revised) annex relating to that agency and transmitted in accordance with sections 36 or 38.

Article II

Juridical personality

Section 3

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

Article III

Property, funds and assets

Section 4

The specialized agencies, their property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 5

The premises of the specialized agencies shall be inviolable. The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 6

The archives of the specialized agencies, and in general all documents belonging to them or held by them shall be inviolable, wherever located.

Section 8

Each specialized agency shall, in exercising its rights under section 7 above, pay due regard to any representations made by the Government of any State party to this Convention in so far as it is considered that effect can be given to such representations without detriment to the interests of the agency.

Section 9

The specialized agencies, their assets, income and other property shall be:

- (a) Exempt from all direct taxes; it is understood, however, that the specialized

agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

- (b) Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country;
- (c) Exempt from duties and prohibitions and restrictions on imports and exports in respect of their publications.

Section 10

While the specialized agencies will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the specialized agencies are making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, States parties to this Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article IV

Facilities in respect of communications

Section 11

Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

Section 12

No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.

The specialized agencies shall have the right to use codes and to dispatch and receive correspondence by courier in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

Article V

Representatives of members

Section 13

Representatives of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- (c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14

In order to secure for the representatives of members of the specialized agencies at meeting convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17

The provisions of sections, 13, 14 and 15 are not applicable in relations to the authorities of a State of which the person is a national or of which he is or has been a representative.

Article VI *Officials*

Section 18

Each specialized agency will specify the categories of officials to which the provisions of this article and of article VIII shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in these categories shall from time to time be made known to the above-mentioned Governments.

Section 19

Officials of the specialized agencies shall:

- (a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;
- (b) Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by the officials of the United Nations;
- (c) Be immune, together with their spouses and relatives dependant on them from immigration restrictions and alien registration;

- (d) Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions;
- (e) Be given, together with their spouses and relatives dependant on them, the same repatriation facilities in time of international crisis as officials of comparable rank of diplomatic missions;
- (f) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 20

The officials of the specialized agencies shall be exempt from national service obligations, provided that, in relation to the States of which they are nationals, such exemptions shall be confined to officials of the specialized agencies whose names have, by reason of their duties, been placed upon a list compiled by the executive head of the specialized agency and approved by the State concerned.

Should other officials of specialized agencies be called up for national service, the State concerned shall, at the request of the specialized agency concerned, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

Section 21

In addition to the immunities and privileges specified in section 19 and 20, the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 22

Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any officials in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency.

Section 23

Each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connection with the privileges, immunities and facilities mentioned in this article.

Article VII *Abuses of privilege*

Section 24

If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialized agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency

concerned the benefits of the privilege or immunity so abused.

Section 25

1. Representatives of members at meetings convened by specialized agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

2. (I) Representatives of members, or persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

(II) In the case of an official to whom section 21 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the executive head of the specialized agency concerned; and, if expulsion proceedings are taken against an official, the executive head of the specialized agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

Article VIII
'Laissez-passer'

Section 26

Officials of the specialized agencies shall be entitled to use the United Nations *laissez-passer* in conformity with administrative arrangements to be concluded between the Secretary-General of the United Nations and the competent authorities of the specialized agencies, to which agencies special powers to issue *laissez-passer* may be delegated. The Secretary-General of the United Nations shall notify each State party to this Convention of each administrative arrangements so concluded.

Section 27

States parties to this Convention shall recognize and accept the United Nations *laissez-passer* issued to officials of the specialized agencies as valid travel documents.

Section 28

Applications for visas, where required, from officials of specialized agencies holding United Nations *laissez-passer*, when accompanied by a certificate that they are traveling on the business of a specialized agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 29

Similar facilities to those specified in section 28 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are traveling on the business of a specialized agency.

Section 30

The executive heads, assistant executive heads, heads of departments and other officials of a rank not lower than head of department of the specialized agencies, travelling on United Nations *laissez-passer* on the business of the specialized agencies, shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions.

Article IX

Settlement of disputes

Section 31

Each specialized agency shall make provision for appropriate modes of settlement of:

- (a) Disputes arising out of contracts or other disputes of private character to which the specialized agency is a party;
- (b) Disputes involving any official of a specialized agency who by reason of his official position enjoys immunity, if immunity has not been waived in accordance with the provisions of section 22.

Article X

Annexes and application to individual specialized agencies

Section 32*

Section 33

In their application to each specialized agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency, as provided in sections 36 and 38.

Section 34

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

Section 35

Draft annexes 1 to 9 are recommended to the specialized agencies named therein. In the case of any specialized agency not mentioned by name in section 1, the Secretary-General of the United Nations shall transmit to the agency a draft annex recommended by the Economic and Social Council.

Section 36

The final text of each annex shall be that approved by the specialized agency in question in accordance with its constitutional procedure. A copy of the annex as approved by each specialized agency shall be transmitted by the agency in question to the Secretary-General of the United Nations and shall thereupon replace the draft referred to in section 35.

Section 37

The present Convention becomes applicable to each specialized agency when it has transmitted to the Secretary-General of the United Nations the final text of the relevant annex and has informed him that it accepts the standard clauses, as modified by this annex, and undertakes to give effect to section 8, 18, 22, 23, 24, 31, 32, 42 and 45 (subject to any modification of section 32 which may be found necessary in order to make the final text of the annex consonant with the constitutional instrument of the agency) and any provisions of the annex placing obligations on the agency. The Secretary-General shall communicate to all Members of the United Nations and to other States members of the specialized agencies certified copies of all annexes transmitted to him under this section and of revised annexes transmitted under section 38.

Section 38

If, after the transmission of a final annex under section 36, any specialized agency approves any amendments thereto in accordance with its constitutional procedure, a revised annex; shall be transmitted by it to the Secretary-General of the United Nations.

Section 39

The provisions of this Convention shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded by any State to any specialized agency by reason of the location in the territory of that State of its headquarters or regional

offices. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialized agency of supplemental agreements adjusting the provision of this Convention or extending or curtailing the privileges and immunities thereby granted.

Section 40

It is understood that the standard clauses, as modified by the final text of an annex sent by a specialized agency to the Secretary-General of the United Nations under section 36 (or any revised annex sent under section 38), will be consistent with the provisions of the constitutional instrument then in force of the agency in question, and that if any amendment to that instrument is necessary for the purpose of making the constitutional instrument so consistent, such amendment will have been brought into force in accordance with the constitutional procedure of that agency before the final (or revised) annex is transmitted.

The Convention shall not itself operate so as to abrogate, or derogate from, any provisions of the constitutional instrument of any specialized agency or any rights or obligations which the agency may otherwise have, acquire, or assume.

Article XI

Final provisions

Section 41

Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialized agency shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

Section 42

Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members which are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency.

Section 43

Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

Section 44

This Convention shall enter into force for each State party to this Convention in respect of a specialized agency when it has become applicable to that agency in accordance with section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

Section 45

The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialized agencies, and executive heads of the specialized agencies, of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The executive head of a specialized agency shall inform the Secretary-General of United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42.

Section 46

It is understood that, when an instrument of accession or a subsequent notification is deposited on behalf of any State, this State will be in a position under its own law to give effect to the terms of this Convention, as modified by the final texts of any annexes relating to the agencies covered by such accessions or notifications.

Section 47

1. Subject to the provisions of paragraphs 2 and 3 of this section, each State party to this Convention undertakes to apply this Convention in respect of each specialized agency covered by its accession or subsequent notification, until such time as a revised convention or annex shall have become applicable to that agency and the said State shall have accepted the revised convention or annex. In the case of a revised annex, the acceptance of States shall be by a notification addressed to the Secretary-General of the United Nations, which shall take effect on the date of its receipt by the Secretary-General.

2. Each State party to this Convention, however, which is not, or has ceased to be, a member of a specialized agency, may address a written notification to the Secretary-General of the United Nations and the executive head of the agency concerned to the effect that it intends to withhold from that agency the benefits of this Convention as from a specified date, which shall not be earlier than three months from the date of receipt of the notification.

3. Each State party to this Convention may withhold the benefit of this Convention from any specialized agency which ceases to be in relationship with the United Nations.

4. The Secretary-General of the United Nations shall inform all members States parties to this Convention of any notification transmitted to him under the provisions of this section.

Section 48

At the request of one-third of the States parties to this Convention, the Secretary-General of the United Nations will convene a conference with a view to its revision.

Section 49

The Secretary-General of the United Nations shall transmit copies of this Convention to each specialized agency and to the Government of each Member of the United Nations.

ANNEXES

ANNEX I

INTERNATIONAL LABOUR ORGANIZATION

In their application to the International Labour Organization the standard clauses shall operate subject to the following provisions:

1. Article V (other than paragraph (c) of section 13) and section 25, paragraphs 1 and 2 (a), of Article VII shall extend to the employers' and workers' members and deputy members of the Governing Body of the International Labour Office and their substitutes; except that any waiver of the immunity of each such person member under section 16 shall be by the Governing Body.
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 International Labour Office and any Assistant Director-General of the International Labour Office.
3. (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.
- (ii) In connection with (d) of 3 (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 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.

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 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

1. Article V and section 25, paragraphs 1 and 2 (I) or article VII shall extend to the President of the Conference and members of the Executive Board of the Organization, their substitutes and advisers except that any waiver of the immunity of any such persons of the Executive Board under section 16, shall be by the Executive Board.
2. The Deputy Director-General of the Organization, his spouse and minor children shall also enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law, which article VI, section 21, of the convention ensures to the executive head of each specialized agency.
3. (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 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.
- (ii) Privileges and immunities are granted to the experts of the Organization in the interest 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 interest of the Organization.

ANNEX V

INTERNATIONAL MONETARY FUND

In its application to the International Monetary Fund (hereinafter called 'the Fund'), the convention (including this annex) shall operate subject to the following provisions:

1. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Fund solely from this convention and are not included in those which it can claim under its Articles or Agreement or otherwise.
2. The provisions of the convention (including this annex) do not modify or amend or require the modification or amendment of the Articles of Agreement of the Fund or impair or limit any of the rights, immunities, privileges or exemptions conferred upon the Fund or any of its members, Governors, Executive Directors, alternates, officers or employees by the Articles of Agreement of the Fund, or by any statute, law or regulation of any member of the Fund or any political subdivision of any such member, or otherwise.

ANNEX VI

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT

In its application to the International Bank for Reconstruction and Development (hereinafter

called 'the Bank'), the convention (including this annex) shall operate subject to the following provisions:

1. The following shall be substituted for section 4:
'Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member of the Bank in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Bank.'
2. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Bank solely from this convention and are not included in those which it can claim under its Articles of Agreement or otherwise.
3. The provisions of the convention (including this annex) do not modify or amend or require the modification or amendment of the Articles of Agreement of the Bank or impair or limit any of the rights, immunities, privileges or exemptions conferred upon the Bank or any of its members, Governors, Executive Directors, alternates, officers or employees by the Articles of Agreement of the Bank or by any statute, law or regulation of any member of the Bank or any political subdivision of any such member, or otherwise.

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 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 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 of their 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 interest 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 interest of the Organization.
3. Article V and section 25, paragraphs 1 and 2 (I), or 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.

ANNEX VIII

UNIVERSAL POSTAL UNION

The standard clauses shall apply without modification.

ANNEX IX

INTERNATIONAL TELECOMMUNICATIONS UNION

The standard clauses shall apply without modification, except that the International Telecommunication Union shall not claim for itself the enjoyment of privileges treatment with regard to the 'Facilities in respect of communications' provided in articles IV, section 11.

ANNEX X

INTERNATIONAL REFUGEE ORGANIZATION

The standard clauses shall apply without modification.

ANNEX XI

WORLD METEOROLOGICAL ORGANIZATION

The standard clauses shall apply without modification.

ANNEX XII

INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

1. The privileges, immunities, exemptions and facilities referred to in Article VI, section 21 of the standard clauses shall also 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 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 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 of their 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 bags for their communications with the Inter-Governmental Maritime Consultative Organization.

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 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.

ANNEX XIII

INTERNATIONAL FINANCE CORPORATION

In its application to the International Finance Corporation (hereinafter called 'the Corporation') the Convention (including this annex) shall operate subject to the following provisions:

1. The following shall be substituted for section 4:
'Actions may be brought against the Corporation only in a court of competent jurisdiction in the territories of a member in which the Corporation has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Corporation shall, where so ever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Corporation.'
2. Paragraph (b) of section 7 of the standard clauses shall apply to the Corporation subject to Article III, section 5 of the Articles of Agreement of the Corporation.
3. The Corporation in its discretion may waive any of the privileges and immunities conferred under Articles VI of its Articles of Agreement to such extent and upon such conditions as it may determine.
4. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Corporation from this Convention and are not included in those which it can claim under its Articles of Agreement or otherwise.
5. The provisions of the Convention (including this annex) do not modify or amend or require the modification or amendment of the Articles of Agreement of the Corporation or impair or limit any of the rights, immunities, privileges or exemptions conferred upon the Corporation or any of its members, Governors, Executive Directors, Alternates, offices and employees by the Articles of Agreement of the Corporation, or by any statute, law or regulation of any member of the Corporation or

any political subdivision of any such member, or otherwise.

ANNEX XIV

INTERNATIONAL DEVELOPMENT ASSOCIATION

In its application to the International Development Association (hereinafter called 'The Association') the Convention, including this annex, shall operate subject to the following provisions:

1. The following shall be substituted for section 4:

'Actions may be brought against the Association only in a court of competent jurisdiction in the territories of a member in which the Association has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Association shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgement against the Association.'

2. Section 32 of the standard clauses shall only apply to differences arising out of the interpretation or application of privileges and immunities which are derived by the Association from this Convention and are not included in those which it can claim under its Articles of Agreement or otherwise.
3. The provisions of the Convention (including this annex) do not modify or amend or require the modification or amendment of the Articles of Agreement of the Association or impair or limit any of the rights, immunities, privileges or exemptions conferred upon the Association or any of its members, Governors, Executive Directors, Alternates, offices and employees by the Articles of Agreement of the Association, or by any statute, law or regulation of any member of the Association or any political subdivision of any such member, or otherwise.

ANNEX XV

WORLD INTELLECTUAL PROPERTY ORGANIZATION

In their application to the World Intellectual Property Organization (hereinafter called 'the Organization'), the standard clause 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 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;
 - (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 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

GOVERNING COUNCIL OF THE 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 the Secretary-General of the Organization, to the any [sic] 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 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 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 such experts in the interests of the Fund and not for the personal benefit of the individuals themselves. The Fund 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 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 modifications:

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 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;
 - (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 of their 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 such 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.

¹Section 32 is omitted from the text.

Аукцие "Д"



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GOVERNMENT NOTICE

DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION

No. 470

5 June 2015

DIPLOMATIC IMMUNITIES AND PRIVILEGES ACT, 2001**MINUTE**

In accordance with the powers vested in me by section 5(3) of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), I hereby recognize the "Agreement between the Republic of South Africa and the Commission of the African Union on the Material and Technical Organization of the Meetings of the 30th Ordinary Session of the Permanent Representatives Committee from 7 to 9 June 2015; the 27th Ordinary Session of the Executive Council from 10 to 12 June 2015 and the 25th Ordinary Session of the Assembly on 14 to 15 June 2015 in Pretoria (7 and 8 June 2015) and Johannesburg (10 to 15 June 2015), Republic of South Africa" for the purposes of granting the immunities and privileges as provided for in the Agreement between the Government of the Republic of South Africa and the Commission of the African Union as set out in the Notice.

Maite Nkoana-Mashabane

Minister of International Relations and Co-operation




SCHEDULE

AGREEMENT BETWEEN THE REPUBLIC OF SOUTH AFRICA AND THE COMMISSION OF THE AFRICAN UNION ON THE MATERIAL AND TECHNICAL ORGANIZATION OF THE MEETINGS OF THE 30TH ORDINARY SESSION OF THE PERMANENT REPRESENTATIVES COMMITTEE FROM 7 TO 9 JUNE 2015, THE 27TH ORDINARY SESSION OF THE EXECUTIVE COUNCIL FROM 10 TO 12 JUNE 2015 AND THE 25TH ORDINARY SESSION OF THE ASSEMBLY ON 14 TO 15 JUNE 2015 IN PRETORIA (7 AND 8 JUNE 2015) AND JOHANNESBURG (10 TO 15 JUNE 2015), REPUBLIC OF SOUTH AFRICA

ARTICLE VIII
PRIVILEGES AND IMMUNITIES

1. The Government shall accord the Members of the Commission and Staff Members, the delegates and other representatives of Inter-Governmental Organizations attending the Meetings the privileges and immunities set forth in Sections C and D, Articles V and VI of the General Convention on the Privileges and Immunities of the OAU.
2. Without prejudice to the provisions of the preceding paragraph, all participants and persons performing duties in connection with the Meetings shall enjoy such facilities and courtesies as are necessary for the efficient performance of their duties.
3. The representatives of the Inter-Governmental Organizations and the Observers accredited to the African Union attending the Meetings shall enjoy the necessary immunities and privileges as provided for in the General Convention referred to in paragraph 1 above.
4. The Government shall provide all the necessary facilities for the entry and exit to and from South Africa to all those persons who are mentioned above and/or who are performing duties connected with the Meetings. Entry visas shall be granted to them preferably before the opening of the Meetings in accordance with the laws of South Africa and in accordance with the modalities for issuance of visas as contained in Annex II.
5. Staff members of the Commission and other organs of the AU holding AU Passport or Laissez-Passer shall not be required to obtain entry visa as per Decision AHG/OAU/AEC/Dec.1 (II) adopted by the Assembly of Heads of State and Government in Ouagadougou, Burkina Faso, in June 1998.

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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

CASE NUMBER:

In the matter between:

THE SOUTH AFRICA LITIGATION CENTRE

APPLICANT

and

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

FIRST RESPONDENT

**THE DIRECTOR-GENERAL OF JUSTICE
AND CONSTITUTIONAL DEVELOPMENT**

SECOND RESPONDENT

THE MINISTER OF POLICE

THIRD RESPONDENT

THE COMMISSIONER OF POLICE

FOURTH RESPONDENT

**THE MINISTER OF INTERNATIONAL
RELATIONS AND COOPERATION**

FIFTH RESPONDENT

**THE DIRECTOR-GENERAL OF
INTERNATIONAL
RELATIONS AND COOPERATION**

SIXTH RESPONDENT

THE MINISTER OF HOME AFFAIRS

SEVENTH RESPONDENT

**THE DIRECTOR-GENERAL OF
HOME AFFAIRS**

EIGHTH RESPONDENT

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE**

NINTH RESPONDENT

**THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**

TENTH RESPONDENT

**THE HEAD OF THE DIRECTORATE FOR
PRIORITY CRIMES INVESTIGATION**

ELEVENTH RESPONDENT

**THE DIRECTOR OF THE PRIORITY
CRIMES LITIGATION UNIT**

TWELFTH RESPONDENT

[Handwritten signatures and initials]

SUPPORTING AFFIDAVIT

I, the undersigned,

DR REGINALD CASSIUS LUBISI

do hereby make oath and state as follows:

1.

I am the ~~Director-General of the Presidency and the Secretary of Cabinet,~~
with offices situated at the Union Building, Arcadia, Pretoria, Gauteng.

2.

The facts contained in this affidavit are within my own personal knowledge, unless otherwise stated or indicated and are to the best of my knowledge and belief true and correct.

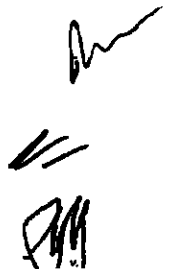
3.

I confirm that I have read the founding and supplementary affidavits deposed to by **KAJAL RAMJATHAN-KEOGH** in support of the application. I do not intend to answer to the allegations raised by the Applicant. I have read the draft answering affidavit of the Second Respondent and I confirm and support the contents thereof. The

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purpose of my affidavit is to inform this Honourable Court of a decision taken by Cabinet which directly relates to the issues raised by the Applicant in this application. I do not intend to repeat what is already stated by the Second Respondent in her answering affidavit, but fully align myself with the arguments raised therein. I therefore respectfully refer the Court to the following:

- 3.1 On or about the beginning of June 2015, Cabinet was made aware of the fact that Omar Hassan Ahmad Al Bashir, the President of the Republic of Sudan ("President Bashir") was invited by the African Union ("AU") to attend an AU Summit to be hosted in the Republic of South Africa and indeed confirmed his attendance.
- 3.2 The confirmation of President Bashir's attendance was accompanied by a request from the Republic of Sudan that President Bashir will be accorded all the privileges and immunities of a delegate attending an AU Summit.
- 3.3 It is in this regard important to note that it is public knowledge that the International Criminal Court ("ICC") has issued two warrants of arrest during 2009 and 2010, respectively in regards to President Bashir for various crimes as defined in the Rome Statute.

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- 3.4 The Republic of South Africa is a State Party to the Rome Statute and therefore obliged to give effect to any request by the ICC pertaining to a warrant of arrest.
- 3.5 Accordingly and as a result of the two warrants of arrests issued by the ICC and the concomitant hosting of the AU Summit, Cabinet deemed it prudent and necessary to deliberate and discuss the issue on whether the Republic of South Africa is required to arrest President Bashir whilst attending an AU Summit.
- 3.6 During early June 2015, Cabinet requested advice from the Chief State Law Advisor and deliberated on this issue at length. During the said discussions, Cabinet was apprised of the host agreement with the AU together with the intention of promulgating Article VIII of the host agreement as well as the implications thereof on the immunities and privileges enjoyed by President Bashir as head of a member state of the AU.
- 3.7 Cabinet collectively accepted and decided that the South African Government as the hosting country is first and foremost obliged to uphold and protect the inviolability of President Bashir in accordance with the AU terms and conditions and to consequently not arrest President Bashir in terms of the ICC arrest warrants whilst he is attending the AU Summit.

No
alleg.





3.8 In addition to the above, Cabinet collectively appreciated and acknowledged that the aforesaid decision can only apply for the duration of the AU Summit.

4.

In the premises, I deny that the Applicant is entitled to any relief set out in the notice of motion.

WHEREFORE I respectfully support the Respondents prayer for an order dismissing the relief sought in the notice of motion with costs consequent upon the employment of two counsel.



Deponent

Signed and sworn before me at PRETORIA on this 15 day of JUNE 2015 after the Deponent declared that he is familiar with the contents of this statement and regards the prescribed oath as binding on his conscience and has no objection against taking the said prescribed oath. There has been compliance with the requirements of the Regulations contained in Government Gazette R1258, dated 21 July 1972 (as amended).



[Handwritten signature]

COMMISSIONER OF OATHS
FULL NAMES: *Grant Holiday*
CAPACITY: *Major*
ADDRESS: *SAPS Head Office
Financial Services
Pretorius Str. 231*

15 JUN 2015
PRIVAATSAK/PRIVATE BAG X04
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THE NATIONAL COMMISSIONER OF
THE SOUTH AFRICAN POLICE SERVICE

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