

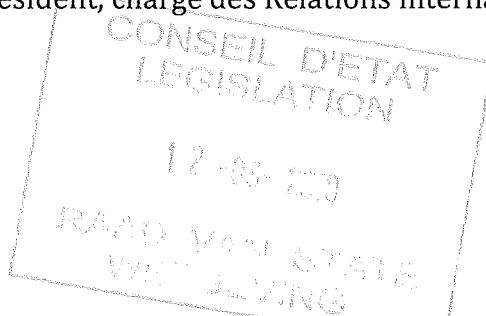
Avant-projet de décret portant assentiment à l'Accord de siège entre le Royaume de Belgique et la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge, fait à Bruxelles le 29 juin 2012 et à Genève le 9 juillet 2012

Le Gouvernement de la Communauté française,

Sur la proposition du Ministre-Président, chargé des Relations internationales,

Après délibération,

ARRÊTE :



Le Ministre-Président, chargé des Relations internationales, est chargé de présenter au Parlement le projet de décret dont la teneur suit :

Article 1^{er}

L'Accord de siège entre le Royaume de Belgique et la Fédération internationale de la Croix-Rouge et du Croissant-Rouge, fait à Bruxelles le 29 juin 2012 et à Genève le 9 juillet 2012, sortira son plein et entier effet.

Article 2

Le présent décret produit ses effets le 9 juillet 2012.

Bruxelles, le **01 MARS 2013**

A handwritten signature in black ink, which appears to read 'Rudy Demotte'.

Rudy DEMOTTE
Ministre-Président,
en charge de l'Egalité des chances et
des Droits des femmes

Accord de siège entre le Royaume de Belgique et la Fédération internationale des Sociétés de la Croix-Rouge et du Croissant- Rouge, fait à Bruxelles le 29 juin 2012 et à Genève le 9 juillet 2012

Exposé des motifs**A. Contexte et objet du Traité**

La Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge (FICR) est la plus grande organisation humanitaire au monde ; elle dispense son aide sans distinction de nationalité, de race, de religion, de classe ou d'opinions politiques.

La Fédération internationale compte 187 Sociétés nationales membres, et vise à améliorer les conditions d'existence des personnes vulnérables, en promouvant le respect de la dignité et la paix dans le monde. Son travail est axé sur quatre domaines essentiels : la promotion des valeurs humanitaires, l'intervention en cas de catastrophe, la préparation aux catastrophes, la santé et l'assistance aux personnes au niveau communautaire.

Avec le Comité international de la Croix-Rouge (CICR), qui a pour mission l'aide aux victimes militaires et civils des conflits armés, la Fédération internationale et les Sociétés nationales constituent le Mouvement international de la Croix-Rouge et du Croissant-Rouge.

Afin de doter sa Délégation à Bruxelles d'un statut officiellement reconnu, la Fédération a demandé à la Belgique de négocier un accord de siège.

Strictement parlant, la FICR n'est pas une organisation internationale gouvernementale dans le sens d'une association d'états. Il existe toutefois plusieurs d'arguments permettant de considérer la Fédération, tout comme le CICR, comme une organisation internationale avec un statut "*sui generis*" nettement différent de celui des autres ONG, et de lui accorder par conséquent la personnalité juridique internationale. On constate en effet que la communauté internationale a chargé la Fédération de missions spécifiques, reprises dans des conventions internationales entre états et autres organisations internationales, que la Fédération jouit indéniablement d'une certaine reconnaissance internationale (statut d'observateur auprès de l'Assemblée générale de l'ONU, partenaire d'ECHO - l'Office humanitaire de la Communauté européenne) et qu'elle peut conclure des traités avec des états tiers: la Fédération a notamment signé des accords de siège avec la Suisse et la Hongrie.

D'autre part, le SPF Finances estimait que la Fédération ne répond pas aux critères permettant de l'assimiler à une organisation internationale au sens de l'article 143, point g), et de l'article 151, paragraphe 1er, point b), de la directive 2006/112/CE (TVA) et au sens de l'article 12, paragraphe 1er, point b) de la directive 2008/118/CEE du Conseil du 16 décembre 2008 (accises).

Par conséquent, il a été convenu entre les deux Parties que l'accord de siège n'accorderait pas d'exemptions fiscales à la Délégation de la FICR en Belgique.

L'accord de siège entre le Royaume de Belgique et la Fédération internationale des Sociétés de la Croix- Rouge et du Croissant-Rouge, signé à Bruxelles le 9 juillet 2012, vise à préciser certains aspects relatifs aux privilèges et immunités accordés par la Belgique à la Délégation de la FICR afin d'assurer le bon fonctionnement de celui-ci. Il contient les dispositions reprises au point B.

B. Commentaires des articles de l'Accord

L'article 1er définit plusieurs termes utilisés dans le texte.

L'article 2 reconnaît la personnalité et la capacité juridiques à la Délégation.

L'article 3 accorde l'immunité de juridiction tant à la Délégation qu'aux biens et avoirs de l'organisation utilisés dans l'exercice de ses fonctions officielles. La Fédération peut renoncer à cette immunité pour une mesure d'exécution éventuelle.

L'article 4 établit l'immunité des biens de la Fédération utilisés dans l'exercice des fonctions officielles de la Délégation.

L'article 5 stipule que les archives sont inviolables.

L'article 6 stipule que les locaux sont inviolables. La Délégation peut cependant en autoriser l'accès. En cas de sinistre, l'autorisation est présumée.

L'article 7 régit les mouvements de fonds de la Délégation.

L'article 8 stipule que la Fédération peut effectuer sur le territoire Belge toutes les opérations nécessaires à l'accomplissement de sa mission humanitaire, dans les limites de la législation belge et en accord avec la société nationale.

L'article 9 stipule que la Belgique facilitera, autant que faire se peut, les activités humanitaires de la Fédération.

L'article 10 définit les limites dans lesquelles la Délégation peut importer des biens et des publications destinés à son usage officiel

L'article 11 garantit la liberté des communications et pose le principe de l'inviolabilité de la correspondance.

L'article 12 traite des privilèges et immunités dont jouissent les fonctionnaires et les dignitaires de la Fédération internationale pendant l'exercice de leurs fonctions et au cours de leurs missions sur le territoire belge.

L'article 13 traite des privilèges et immunités dont jouissent les représentants des pays membres de la Fédération participant aux réunions convoquées par la Fédération au cours de leurs déplacements à destination ou en provenance du lieu de la réunion.

L'article 14 stipule que le Chef de la Délégation et son adjoint bénéficient des privilèges et immunités diplomatiques, étant entendu que ces privilèges ne comprennent aucun privilège fiscal et que l'immunité de juridiction ne s'étend pas aux matières fiscales.

L'article 15 traite du statut du personnel et prévoit des mesures vis-à-vis des Délégués en ce qui concerne:

- l'immunité de juridiction,
- le séjour.

L'article 16 traite des privilèges et immunités dont jouissent les experts, autres que les fonctionnaires, lorsqu'ils accomplissent des missions pour la Fédération internationale.

L'article 17 stipule que la Belgique n'est pas tenue d'accorder les privilèges et immunités à ses propres ressortissants nationaux et aux résidents permanents.

L'article 18 exempte les Délégués de la mise en application de la législation belge sur l'emploi pour ce qui concerne leur activité officielle dans cette Délégation.

L'article 19 stipule que les Délégués qui ne sont ni ressortissants belges ni résidents permanents en Belgique sont exemptés de l'assujettissement obligatoire à la sécurité sociale belge ; ils peuvent opter pour l'affiliation au régime de sécurité sociale de la Fédération.

Les articles 20 à 25 disposent que le recours aux privilèges et immunités accordés ne pourra se faire que dans le seul but de faciliter le fonctionnement autonome de la Délégation. Ce fonctionnement autonome ne peut entraver le cours normal de la justice belge.

L'article 26 prévoit une procédure d'arbitrage en cas de divergence d'interprétation.

L'article 27 traite de l'entrée en vigueur et de la révision.

C. Nature du Traité sur le plan interne

Le caractère mixte (Etat fédéral – Communautés – Régions) de ce traité a été reconnu par le Groupe de travail Traités mixtes (G.T.T.M.) en date du 03 février 2011.

HEADQUARTERS AGREEMENT
BETWEEN
THE KINGDOM OF BELGIUM
AND
THE INTERNATIONAL FEDERATION
OF RED CROSS AND RED CRESCENT SOCIETIES

**HEADQUARTERS AGREEMENT
BETWEEN
THE KINGDOM OF BELGIUM
AND
THE INTERNATIONAL FEDERATION
OF RED CROSS AND RED CRESCENT SOCIETIES**

THE KINGDOM OF BELGIUM,
hereinafter referred to as "Belgium", represented by:

- the Federal Government,
- the Government of the French Community,
- the Flemish Government,
- the Government of the German-speaking Community,
- the Walloon Government,
- the Government of the Brussels-Capital Region;

and

**THE INTERNATIONAL FEDERATION OF RED CROSS AND RED CRESCENT
SOCIETIES,**
hereinafter referred to as "International Federation";

RECALLING the Statutes of the International Red Cross and Red Crescent Movement, adopted by the XXVth International Conference of the Red Cross (Geneva, 1986), according to which the general object of the International Federation of Red Cross and Red Crescent Societies is "to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities by the National Societies, with a view to preventing and alleviating human suffering and thereby contributing to the maintenance and the promotion of the peace in the world", its functions concerning in particular relief in case of disaster and the assistance to the development of Red Cross or Red Crescent National Societies,

RESPONDING to the desire of the International Federation to establish a Delegation in Belgium, hereinafter referred to as "the Delegation";

WISHING to conclude an agreement to determine the privileges and immunities necessary for the functioning of the Delegation and for the successful accomplishment of the mission of its members;

HAVE AGREED as follows:

CHAPTER I

PERSONALITY, PRIVILEGES AND IMMUNITIES OF THE DELEGATION OF THE INTERNATIONAL FEDERATION

Article 1

For the purposes of the present Agreement:

- a) "the Secretary General" means the Secretary General of the International Federation;
- b) "the Delegation" means the Delegation of the International Federation of Red Cross and Red Crescent Societies;
- c) "the Head of the Delegation" means the highest officer of the Delegation, or the person officially acting on his/her behalf in his/her absence;
- d) "the Delegates" means the officers of the International Federation assigned to undertake their duties in the Delegation, with the exception of the staff locally employed;
- e) "the staff locally employed" means the administrative and technical staff recruited by the International Federation on the Belgian Territory, among Belgian nationals or people permanently residing on the Belgian Territory;
- f) "the members of the Delegation" means the Head of the Delegation, the Delegates and the staff locally employed.

Article 2

The Delegation shall have legal personality and capacity on the Belgian Territory.

Article 3

The Delegation, as well as the properties and assets of the International Federation used by the Delegation for the exercising of its official functions, shall enjoy legal immunity except where expressly renounced by the International Federation.

Article 4

1. The properties and assets of International Federation used for the exercising of the official functions of the Delegation may not be subject to any form of requisition, confiscation, sequestration nor to any other form of seizure or constraint.
2. Should any form of expropriation be necessary, all appropriate action will be taken to prevent the exercising of the functions of the Delegation being impeded in any way. In this case Belgium will give its assistance to enable relocation of the Delegation.

Article 5

The archives of the Delegation, and, in a general way, all documents of the Delegation or those held by it shall be inviolable.

Article 6

1. The premises used exclusively for the exercising of the official functions of the Delegation are inviolable. Permission by the Head of the Delegation shall be required for access to its premises.
2. This permission, however, shall be assumed to be given in case of emergencies requiring prompt protective action.
3. Belgium shall take all appropriate measures to prevent invasion or damage to the Delegation premises, to prevent the peace of the Delegation being disturbed or its dignity being diminished in any way.

Article 7

1. Without prejudice to the international provisions and to the relevant provisions of the European Community the Delegation may hold in Belgium currency of any kind and operate accounts in all currencies insofar as necessary for the execution of operations corresponding to its aim.
2. Belgium undertakes to grant the Delegation all authorisations necessary to freely transfer, according to the modalities provided for in the applicable national regulations and international agreements, funds necessary for the setting up and operation of the Delegation.

Article 8

1. The International Federation shall be free to carry out, on the Belgian territory, such activities as may be necessary for the exercise of its humanitarian mission, in conformity with its own Constitution and with the Fundamental Principles of the International Red Cross and Red Crescent Movement.
2. On the Belgian territory, the International Federation shall act through or in agreement with the National Society and in conformity with the applicable laws of Belgium.
3. The International Federation, its officials and office bearers shall be entitled to make use at all times of the red cross, red crescent, and red crystal emblems.

Article 9

Belgium shall facilitate to the maximum extent possible the humanitarian activities of the International Federation. It shall, in particular, allow and facilitate all transnational operations, contacts, and communications of the International Federation. It shall, to the maximum extent possible, apply to the International Federation the "Measures to Expedite International Relief" adopted by Resolution VI of the XXIIIrd International Conference of the Red Cross (Bucharest, 1977) and subsequently reaffirmed by Resolution A/RES/32/56 (1977) of the United Nations General Assembly.

Article 10

Without prejudice to the obligations arising for Belgium from the treaties concerning the European Union and the application of legal and regulatory provisions regarding public order, security, health or morals, the Delegation may import all goods and publications destined for its official use.

Article 11

Freedom of communication for its official purposes shall be guaranteed to the Delegation. Its official correspondence shall be inviolable.

CHAPTER II

Article 12

1. Regardless of their nationality, officers and office bearers of the International Federation, holding the International Federation identity card accompanied by a certificate that they are travelling on the business of the International Federation shall enjoy, while exercising their functions and during their mission on the Belgian territory:
 - a) immunity from legal process in respect of all acts performed by them in their official capacity (including words spoken or written), even after the end of their mission; this immunity from jurisdiction will include exemption of the obligation to testify on facts that they might have learned due to the exercise of their functions;
 - 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) immunity from immigration restrictions and alien registration; the Government will provide them free of charge and as quickly as possible the appropriate travel documents and other visas and necessary certificates;

- e) the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions and intergovernmental organisations;
 - f) the same repatriation facilities in time of national or international crisis as officials of comparable rank of diplomatic missions and intergovernmental organisations;
 - g) freedom of movement and travel.
2. In addition to the status specified in paragraph 1 of the present article, the President and the Secretary General of the International Federation or any office bearer or official acting on their behalf during their absence from duty, shall be accorded in respect to themselves, their spouse and minor children, the immunities, facilities, exemptions, excluding fiscal exemptions, and privileges accorded to diplomatic envoys in accordance with international law.

Article 13

Representatives of the Red Cross and Red Crescent member national societies of the International Federation, in regards to meetings convened by the International Federation on the Belgian territory shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the privileges and immunities as set out below:

- a) immunity from legal process in respect of all acts performed by them in their official capacity (including words spoken or written), even after the end of their mission; this immunity from jurisdiction will include the exemption to testify on facts that they might have learned due to the exercise of their functions;
- 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 members of their family from immigration restrictions and alien registration;
- e) the same facilities in respect of currency or exchange restrictions as are accorded to officials of comparable rank of diplomatic missions and intergovernmental organisations; and
- f) the same immunities in respect of their personal baggage as are accorded to diplomatic envoys.

Article 14

1. The Head of Delegation and his/her deputy shall enjoy the immunities, privileges and facilities granted to the members of the diplomatic personnel of diplomatic missions. Their spouse and their dependent minor children, living under the same roof, shall enjoy the privileges granted to the spouses and to the minor children of the diplomatic personnel.
2. The immunities, privileges and facilities mentioned in paragraph 1 of the present article do not include any fiscal privileges.
3. It is understood that the legal immunity resulting from paragraph 1 of the present article does not extend to fiscal matters.

Article 15

1. All Delegates shall enjoy:
 - a) legal immunity for acts performed in their official capacity, including words written or spoken; such immunity shall apply even after they have left the service;
 - b) inviolability of all official papers and documents.
2. All Delegates, as well as their legal spouse and their dependent minor children, living under the same roof, shall enjoy exemption from measures restricting immigration and from aliens registration formalities. This exemption shall be given in accordance with Belgian legislation on the matter.
3. The Delegation shall notify the Protocol Service of the Federal Public Service Foreign Affairs of the arrival and final departure of its Delegates and other members and shall also provide the following specific information about all Delegates and other members:
 - a) surname and first name
 - b) place and date of birth
 - c) sex
 - d) nationality
 - e) permanent residence (town, street, number)
 - f) civil status
 - g) composition of the family
 - h) the social security scheme chosen by the staff member

The Protocol Service of the Federal Public Service Foreign Affairs shall be notified, within two weeks, of any changes to the above-mentioned data.

Article 16

Experts, other than officials, performing missions for the International Federation shall be accorded the privileges and immunities as set out below:

- a) immunity from legal process in respect of all acts performed by them in their official capacity (including words spoken or written), even after the end of their mission; this immunity from jurisdiction will include the exemption to testify on facts that they might have learned due to the exercise of their functions;
- b) inviolability for all papers and documents;
- c) for the purpose of their communications with the International Federation the right to use codes and to receive papers or correspondence by courier or in sealed bags; and

- d) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments and intergovernmental organizations on temporary or short-term official missions.

Article 17

Belgium shall not be bound to extend to its own nationals or to permanent residents the advantages, privileges and immunities granted under this Agreement.

Article 18

For the exercising of their official functions within the Delegation, the Delegates shall not be subject to Belgian legislation on employment of foreign workers and on the exercising of professional self-employed activities by foreigners.

Article 19

1. The Delegates who are not Belgian nationals or who are not permanently residing in Belgium and are not exercising in Belgium any other gainful activity except that required by their functions, can choose to be covered by the social security schemes applicable to the Delegates of the International Federation under the rules provided for by those schemes. This right of option must be exercised by the Delegate within two weeks of his first taking up his duties, and must be notified, within the same delay, in accordance with Article 14.3.
2. The Delegation will ensure coverage by the Belgian social security system of its Belgian Delegates or permanent residents, as well as of its Delegates who have not opted for coverage by the social protection schemes provided by the International Federation itself.
3. The International Federation undertakes to guarantee its Delegates posted in Belgium who are covered by its own social security schemes, as well as their legal spouse and their dependent children, living under the same roof, referred to in Article 14.2, advantages equivalent to those provided by the Belgian social security system.
4. Members of the Delegation who do not occupy a permanent position at the International Federation considering the mission and the statutory regulations of the International Federation will be covered by the Belgian social security system.
5. Belgium can obtain from the Delegation or from the International Federation the repayment of costs incurred for any aid having a social character it may have to provide to officials of the International Federation and other Delegates posted to the Delegation who are covered by the social security schemes applicable to the Delegates of the International Federation.

CHAPTER III

GENERAL PROVISIONS

Article 20

The privileges and immunities are granted to the Delegates and other Members of the Delegation only in the interest of the International Federation and not for their personal advantage. The Secretary General shall waive all immunity whenever the immunity would impede the course of justice and such waiver does not prejudice the interest of the International Federation and the proper functioning of the Delegation.

Article 21

Without prejudice to the rights conferred upon the Delegation and its Delegates and other Members by this Agreement, Belgium reserves the right to take all necessary precautions in the interest of its security.

Article 22

1. The persons referred to in articles 12, 13, 14, 15 and 16 shall not enjoy any legal immunity regarding motor traffic offences or damages caused by a motor vehicle.
2. The Delegation and its Delegates and other Members shall comply with all obligations imposed by Belgian legislation concerning civil liability insurance for the use of any motor vehicle.

Article 23

The Delegation and all its Delegates and other Members shall co-operate at all times with the appropriate Belgian authorities to facilitate the proper administration of justice, to ensure observation of police regulations and to prevent the occurrence of any abuse in connection with the immunities and privileges provided for in this Agreement.

Article 24

The International Federation, the Delegation and all their Delegates and other Members shall comply with Belgian laws and regulations and with judgments rendered against them.

Article 25

Belgium shall have no international responsibility whatsoever for the activities of the Delegation on its territory as regards the acts or omissions of the Delegation or of its Delegates and other Members acting or failing to act in the exercise of their functions.

CHAPTER IV

FINAL PROVISIONS

Article 26

1. Any difference of views regarding the application or interpretation of this Agreement, which cannot be resolved through direct negotiations between the Parties, may be submitted, by one of the Parties, to an arbitral tribunal composed of three members.
2. The Parties shall each appoint one arbitrator.
3. The third arbitrator shall be appointed by both Parties upon consultation.
4. The third arbitrator shall be the President of the arbitral tribunal.
5. In case of disagreement on the choice of the third arbitrator, the third arbitrator shall be appointed by the President of the International Court of Justice at the request of the Parties.
6. The dispute shall be brought to the arbitral tribunal upon application of either Party.
7. The arbitral tribunal shall determine its own procedure.

Article 27

Both Parties shall notify each other of the completion of the internal constitutional and legal procedures required for the entry into force of this Agreement.

The Agreement shall enter into force on the first day of the second month following the date of exchange of the last notification.

This Agreement can be revised at the request of one of the Parties.

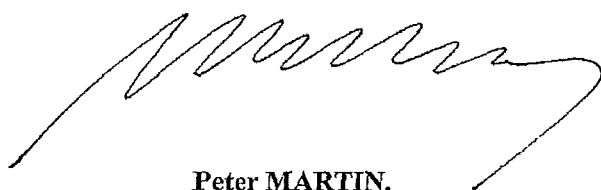
IN WITNESS WHEREOF, the Representatives of the Kingdom of Belgium and of the International Federation of Red Cross and Red Crescent Societies have signed this Agreement.

DONE at Brussels, on 29 June..... 2012 and at Geneva, on
.....9 July..... 2012, in duplicate, in the English language.

FOR THE KINGDOM OF BELGIUM:

FOR THE INTERNATIONAL FEDERATION
OF RED CROSS
AND RED CRESCENT SOCIETIES:

For the French Community:
For the Flemish Community:
For the German-speaking Community:
For the Walloon Region:
For the Flemish Region:
and
For the Brussels-Capital Region:



Peter MARTIN,
Ambassador,
President of the Interministerial Committee
for Host Nation Policy



Bekele GELETA,
Secretary General

COPIE CERTIFIÉE CONFORME À L'ORIGINAL
MET HET ORIGINEEL EENSLUIDEND VERKLAARD AFSCHRIFT
Bruxelles,
Brussel, 09-08-2012
P.-D. Le Chef du Service des Traités du
Service Public Fédéral Affaires Étrangères de Belgique
Het Hoofd van de Dienst Verdragen van de
Federale Overheidsdienst Buitenlandse Zaken van België
MRSINAS SOFIA - Attacheé

[Handwritten signature]

