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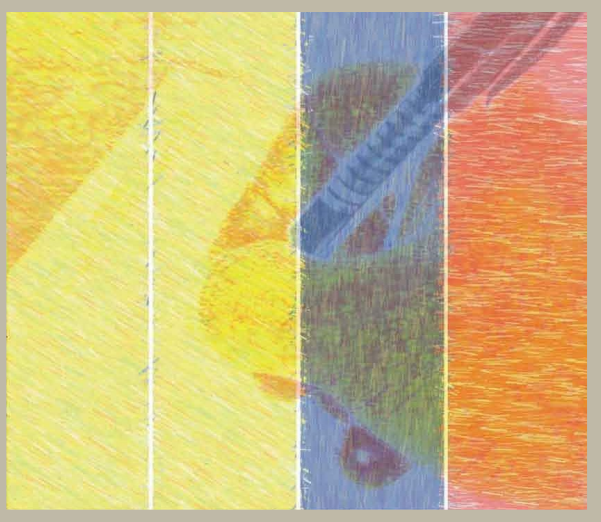

International Cooperation and its Legal Regime in Colombia

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Legal Regime of International Cooperation

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Presentation

Along with the political and technical aspects, which are very important and give vitality to international cooperation, there is the law that serves as the basis for its management.

The fulfillment of the institutional mission of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, in the form of coordination and promotion of non-reimbursable technical and financial cooperation, implies providing advice and support to the different actors of international cooperation, in those aspects of a legal nature related to the coordination, negotiation, agreement, reception and execution of cooperation, throughout the life cycle of the projects.

This work becomes even more important, given the multiplicity of actors involved in the management of international cooperation, the diversity of issues that are subject to regulation and the branches of law that deal with it.

In short, it is a whole set made up of legal norms of an international nature, such as the complementary treaties and agreements that develop them; by norms of constitutional rank that establish the parameters on which foreign policy is developed and respect for the principles of international law accepted by Colombia. Together with these fundamental pillars of cooperation, there are also the norms approved by Congress and the regulations of the same issued by the Executive and their administrative development by the different entities that have under their responsibility the various issues that cooperation entails, such as the granting of visas, the system for opening current accounts in foreign currency, the incorporation of resources into the general budget of the Nation, imports and the application of tax exemptions.

This strategic function of legal advice and dissemination of international regulations has been fulfilled with a first publication at the time of the Colombian Agency for International Cooperation - ACCI, today SOCIAL ACTION, called "Legal Foundations of International Cooperation in Colombia", made available to the international cooperation community in July 2002, in whose elaboration María Cristina Zea de Durán, Legal Advisor of the ACCI, participated in an important way in previous years.

The merger authorized by the National Government between the Colombian Agency for International Cooperation and the Social Solidarity Network, through Decree 2467 of 2005 and the development of legislative, regulatory, jurisprudential and doctrinal order, which have had during the last four years, different topics of international cooperation, has made it necessary to treat in a more comprehensive way, complement and update said legal knowledge and consequently present to cooperators, embassies, representations of international organizations,

cooperation agencies, public and private recipients and executors of international cooperation, this publication entitled "International Cooperation and its Legal Regime in Colombia".

This is the continuity of an institutional effort to analyze and compile the complex legal system, both international and national, of international cooperation in our country, under the guidance, on this occasion, of the lawyer Javier Ricardo Morillo Guerrero[1], who has been providing legal advice to SOCIAL ACTION, in the various matters of international cooperation, which without pretending to cover all areas of this same, collects those that have been considered as foremost, for the sake of its disclosure, interpretation and proper application by the recipients; a means of consultation and analysis for international cooperation actors and scholars of the subject.

Through this document, the legislative effort of the Congress of the Republic, the regulation of the National Government and the institutional effort is evidenced through the presentation and support of different proposals for the modification of norms that affect the effective and efficient reception and execution of international cooperation, such as the Organic Statute of the Budget and the General Contracting Statute of the Public Administration, expressions of the firm interest in promoting coordination to make it easier for entities to function efficiently and profitably and have the maximum impact on the development and qualitative transformation of the Public Administration through its modernization, simplification, decentralization and transparency; a point of departure and reflection for the desired harmonization of cooperant procedures proclaimed in the Roman Declaration on harmonization of February 25, 2003, in which the decision to harmonize the policies, procedures, and operational practices of donors with those of the associated country systems in order to improve the effectiveness of development aid and, therefore, contribute to achieving the Millennium Development Goals.

Luis Alfonso Hoyos Aristizábal
Senior Presidential Advisor.

In June 2007, the first edition of this publication was published. As of that date, the final text of the modifications made by Law 1150 of 2007, to what is established in subparagraph 4 of article 13 of Law 80 of 1993, was not yet available. Copies of that first edition sold out, SOCIAL ACTION has prepared this second edition, updated with these legislative modifications and the Regulatory Decree 2474 of 2008, leaving in consideration of the operators and scholars of the subject some criteria or making comments on the effects and interpretation of these regulations, in the terms of what is established in subparagraph 3 of article 25 of the Contentious-Administrative Code, given the multiplicity of queries and concerns that public entities, cooperators and executors of International Cooperation resources have presented about them. Among other aspects of the legal order and of special interest, it is also updated in some matters of a budgetary nature and with the inclusion of Presidential Directive No. 01 of 2008, through which gives guidelines on the coordination of international cooperation in the country.

Javier Ricardo Morillo Guerrero
Bogota, November 2008

1 Lawyer graduated and specialized in Commercial Law from the Pontificia Universidad Javeriana and in State Contracting at the Universidad Externado de Colombia.

Chapter 1

The cooperation International and Law

1.1 INTERNATIONAL LAW

International cooperation finds its reason for being in the universal principles of solidarity among peoples, respect and protection of human rights and in the incessant search for better conditions and greater resources that provide man with a situation of well-being.
in accordance with their human dignity, the ultimate goal of the existence of States.

It is also a development of the principles of sovereignty, equality, co-responsibility, mutual interest, sustainability, equity, efficiency and preservation of the environment, closely linked to relations between the subjects of international law.

Being intimately linked to international relations, its legal basis must be found in international law, that legal discipline that regulates relations between States and between them and international organizations.

It could be said that in international cooperation, mainly, that streak that illuminates the jus gentium is evident and makes it be called today as the right of human dignity.

They regulate the way in which the above relationships take place, the way in which they express their consent to be bound, the Vienna Convention on the Law of Treaties[2] as well as the Vienna Convention on the Law of Treaties between States and International Organizations or between Organizations International, also known as Vienna II[3], which we will deal with later.

Normative background of international cooperation

As connatural to the human being and fundamental for humanity, the enunciated principles are not of recent date.

Remote antecedents, generally associated with the peace and the humanization of the barbaric wars that

2 Signed in Vienna on May 23, 1969 and approved through Law 32 of 1985.

3 Signed in Vienna on March 21, 1986 and approved by Law 406 of 1997.

preceded, evidenced the degree of development of ancient civilizations, who began to contemplate them when regulating their relations with neighboring peoples and were the object of recognition and protection through international law[4].

Thus, in East Asia, Hindu and Chinese cultures, influenced by religious currents (Buddhism and Confucianism), imposed the condemnation of war and the desire for conquest early on. The Code of Manú, as a legal support for war, established that war with just cause was inevitable, but it was necessary to defend the institutions and protect the non-belligerent population with measures for job promotion and development and protection for the unarmed, defenseless and runaways. The Chinese political philosophy based on the idea of universal domination "China -Empire of the Center- and its emperor -Son of Heaven-" influenced the Chinese to become the managers of "gracious concessions" in international agreements.

In the Ancient East, after an armed conflict with Egypt, a treaty emerged called to revolutionize international relations of the time that established, under the patronage of the gods, peace, perpetual friendship and a commitment to solidarity against enemies, domestic and foreign, establishing, in addition, with a superior character the first extradition treaties of humanity, antecedent therefore of judicial cooperation. Between King Ebba and the sovereign of Assyria they established friendly and commercial relations between the two sovereigns and established sanctions that must be applied to the crimes committed by their respective subjects. Similarly, the friendship treaty between the "Great King" of Akkad, Naram-Sin (around the 22nd century BC), and the ruler of Elam can be mentioned.

In Israel, under a religious belief, a valuable criterion of supposed ethics in international law as the ideal of friendship and whose managers were the prophets, working under the messianic concept of peace. The conception of exile, discord, war and injustice were archetypes that began to take effect in all of humanity.

The world of states of the Ancient East knew a fairly expanded international law and with solid forms of exchange between states, embassies, right of asylum, friendship treaties, alliances, legal assistance between states, allowing a reciprocal duty of extradition.

The international legal system of Carthage was determined by the sea and its core was made up of commercial interests. The state was limited to securing the extensive network of factories and mercantile centers with its naval power and treaties with other powers, background of trade cooperation[5].

The Roman people, characterized by the strength of law, founded their legal relationship on the basis of Justianian equality and conceptually ordered friendship with other peoples by signing treaties of friendship, neutrality, and treaties that established court relations, of clientele and submission to those defeated on the battlefield or without equal rights. The ideas of the Roman *pax*, of the *aequitas*, of *fides* and *ius gentium* were also the most valuable legacy, that at the end of its evolution, it had to transmit the Roman right to the upcoming Christian West.

For Francisco Suárez (1548-1617), "the essential reason of international law is that the human race, although divided into different kingdoms and nations,

4 These antecedents are reviewed in special detail in the work of Luis Fernando Álvarez Londoño SJ History of Public International Law, International Law Studies 3, Pontificia Universidad Javeriana.

5 Alfred Verdross. Public International Law,Aguilar Law Library,Madrid, 1976, p. 42, cited ibid.

has, however, a certain unity not only specific, but also quasi-political and moral, resulting from the natural process of love and mutual charity that should be extended to everyone, even foreigners, of whatever nation they may be..."[6].

International Cooperation was developed in the technical and commercial fields. All peace treaties of the eighteenth century contained provisions of a commercial nature. Thus, in the trade treaties of Utrecht, concluded by France with Great Britain and Holland, freedom of trade was agreed between both contracting parties: their respective subjects enjoyed all the privileges and freedoms that could be granted in the future to another nation, and then the most-favoured-nation clause appear for the first time. In both contracting states, the respective subjects were reciprocally granted the right to travel and the right to reside, the freedom to testate and the free exercise of their worship; merchants were exempt from the deposit obligation and paid only the normal customs and transit duties, but no other taxes; and tax duties on ship cargo were also abolished, and foreign merchants were granted the right to appoint their own notaries and lawyers. France and Great Britain reciprocally granted each other the right to send each other consuls to represent their interests in the other country.

Subsequently, international organizations emerged, as an influence of the theories of Francisco Suárez, who was the first of the international law writers to point out the possibility of an organization of the international community, observing that States are free to renounce war as a means of obtaining their right, being able to institute a supranational decision-making body with corrective power[7]. For Kant, morality prescribes States to associate in a peaceful organization under rational laws. More like that the States resist the implantation of a universal republic, Kant proposes as a supplementary solution, a society of nations with a permanent congress of States, whose task must consist of the peaceful resolution of all international disputes[8] and together with these doctrines, the Red Cross (ICRC) was founded by Henri Dunant in 1863, an organization recognized by the community of states as a limited subject of public international law, as a humanitarian institution[9], antecedent therefore of this modality of international cooperation.

As more recent antecedents and in particular of the 20th century, we consider of importance to review the following:

Covenant of the League of Nations[10]

The League of Nations is created. intended to ensure collective safety, the security of each of its members, through the union of all against a possible aggressor. There it was arranged that the members of society will make an effort to ensure and maintain equitable and humane working conditions for men, women and children, prevent and combat diseases, will give equitable treatment to indigenous people, the society will inspect agreements on trafficking in women and children, opium and harmful drugs.

6 De legibus, Lib. II, Chap. XIX, No. 9; Vitoria and Suarez,p. 169.

7 De leg., II, chap. IX, no.8. Also De Bello, section 6, no. 5.

8 The Metaphysics of customs (1797), I, pp. 54 and 51.

9 Second Geneva Convention of 1906 and Third of 1929, the Pact of the SDN article 25, the Convention relative to prisoners of war, of July 27, 1929, for their part, recognized the International Committee of the Red Cross in all that concerns its humanitarian work. Likewise, the Convention Geneva of August 12, 1949 for the protection of war victims also gives the International Committee of the Red Cross an international legal status, by entrusting it with certain circumstances the tasks of the Protecting Powers.

10 Signed at Versailles on June 28, 1919.

Charter of the United Nations[11]

Establishes the United Nations Organization. Its purposes are to maintain international peace and security; to foster relations among nations friendship and carry out international cooperation in the solution of international problems of an economic, social, cultural or humanitarian nature and in respect for human rights and fundamental freedoms (Chapter I). For these purposes, the States jointly or separately undertook to take measures to fulfill said purposes, promote higher standards of living and conditions of progress, economic and social development, solve health problems and promote international cooperation in the cultural and educational field. The "specialized agencies"[12] of the United Nations were institutionalized to carry out these purposes. (Chapter IX).

Organization for European Economic Cooperation(OEEC)

Created in 1948, mainly to fulfill the objective of rebuilding the European economies and societies destroyed by war, resulting from the so-called Marshall Plan.

The Organization for Economic Cooperation and Development, OECD[13]

The Organization for Economic Co-operation and Development (OECD) has as objective to promote policies to achieve the highest sustainable economic growth, employment and a rising standard of living in member countries, while maintaining financial stability and thus contributing to the development of the world economy; contribute to a strong economic expansion in member countries as well as non-members, in the process of economic development; and contribute to the expansion of world trade on a multilateral and non-discriminatory basis, in accordance with international commitments.

In order to achieve these objectives, the OECD has created a number of specialized committees. One of them is the Development Assistance Committee, DAC, whose members have decided, by mutual agreement, to guarantee an expansion of the aggregate volume of total resources available to developing countries and to improve their effectiveness. To this end, members periodically review together both the volume and nature of their contributions to aid programs, bilateral and multilateral, and consult with each other on all other relevant matters of their development aid policies.

Declaration on the principles of international law relating to friendly relations and cooperation among States in accordance with the Charter of the United Nations[14]

In which the principle of "The obligation of States to cooperate with each other, in accordance

11 Signed in San Francisco on June 26, 1945. 12 ILO, 1946; FAO, 1945; UNESCO, 1946; WHO, 1946; World Bank and International Monetary Fund, 1945; International Civil Aviation Organization, ICAO, 1947; Universal Postal Union, UPU, 1948; ITU,1947; WIPO, 1950, among others.

13 It was created under Article 1 of the Convention signed in Paris on December 14, 1960, which entered into force on September 30, 1961.

14 Approved by the General Assembly on November 12 1970.

with the Charter", regardless of the differences in their political, economic and social systems, in the different economic, social, cultural, science and technology, culture and especially cooperate to promote economic growth throughout the world, particularly in developing countries. Promote the stability and progress of the world economy, the general welfare of nations and international cooperation free from all discrimination based on those differences.

Declaration of Buenos Aires

In which the Plan of Action to Promote and Carry out Cooperation was adopted Technique among Developing Countries, CTPD[15].

Declaration and Program of Action of the World Conference of Human Rights in Vienna[16]

They reaffirm the right to development as universal and inalienable and integral to fundamental human rights. They establish that states must cooperate mutually and efficiently to achieve development and eliminate obstacles to development, also taking into account the environment. They invite the international community to continue giving high priority to alleviating and eliminating extreme poverty, which inhibits the enjoyment of human rights. Orders the international community to take measures to prevent and combat terrorism and drug trafficking, such as activities that are aimed at the destruction of human rights, freedom and democracy and the security of States. Recommends providing more resources to establish and strengthen regional agreements for the promotion and protection of human rights.

2000 Summit. Millennium Goals

Adopted in 2000 by the governments of 189 countries as a commitment to combat inequality and improve human development in the world, taking into account the year 2015 for its realization, with the fundamental purpose of eradicating extreme poverty and hunger, universalizing primary education, promoting gender equality, improving health, reverse environmental degradation, and foster a global partnership for development.

Monterrey Consensus[17] and the "Declaration of Nuevo León"

Developed countries recognized the importance of supporting middle-income countries, through international cooperation, in their efforts to eradicate poverty, increase social cohesion, as well as promote sustainable economic development and institutional development. They recognized the need to substantially increase ODA and other resources so that developing countries can achieve the goals and objectives of internationally agreed development agreements, including those set forth in the Declaration of Millennium.

They invited developing countries to use the ODA effectively in order to achieve its

15 Signed in Buenos Aires on September 12, 1978.

16 Approved by the World Conference on Human Rights on June 25, 1993.

17 Adopted at the International Conference on Financing for Development on March 22, 2002. The Declaration of Nuevo León is from the year 2004.

development goals and objectives and committed to establishing appropriate legal and regulatory frameworks in the respective countries that, while allowing transparent and stable conditions, make it easier for entities to operate efficiently and profitably and have the maximum impact on development. They committed themselves to the qualitative transformation of the Public Administration through its modernization, simplification, decentralization and transparency. Likewise, to expand their efforts to improve the investment climate in their countries and promote corporate social responsibility. Also, to increase the transparency of the international organizations of which they are members by strengthening their accountability mechanisms.

The above commitments were ratified at the III Summit of Latin America, the Caribbean and the European Union, held in Guadalajara, Mexico, on the 28th and 29th of May 2004, where the Heads of State and Government from Latin America, the Caribbean and the European Union, met and highlighted the importance of implementing the commitments assumed at the Monterrey Conference on Financing for Development in all its aspects.

Rome Declaration on harmonization[18]

Result of the same, the decision to harmonize the policies, procedures, and operational practices of the donors with those of the associated country systems in order to improve the effectiveness of development aid and, therefore, contribute to achieve the Millennium Development Goals (MDGs).

The aid workers stated that they are concerned to see more and more evidence, that over time, the sheer variety of donor requirements and processes for preparing, delivering, and monitoring development aid reduce the limited capacity of partner countries and cause them unproductive transaction costs. They were also aware of partner country concerns that donor practices do not always align with national development priorities and systems, including their budget, program and project planning cycles, and public spending and financial management systems. They then recognized that these issues require urgent, coordinated and sustained action to improve our effectiveness on the ground.

The donors considered it of great importance that the countries recipients take greater leadership in coordinating development aid and be assisted in improving their capacity to do so. Recipient countries, for their part, will undertake the necessary reforms to progressively allow donors to trust national systems more and more, thanks to the adoption of international principles or standards and the application of good practices. The key element that will guide this task will be the national plan that recognizes various aid modalities (projects, sectoral approaches, and budget or balance of payments support), and ensures the participation of civil society, including the private sector.

Paris Declaration on Aid Effectiveness for Development[19]

Ministers from developed and developing countries, Heads of multilateral development institutions

18 February 25, 2003.
19 Paris, March 2, 2005

and bilateral, expressed their decision to take far-reaching and monitorable action to reform the way aid is delivered and managed, looking ahead to the UN's five-year review of the Declaration of the Millennium and the Millennium Development Goals (MDGs).

They recognized that if it is necessary to increase the volume of aid and other development resources to achieve these objectives, it is also necessary to significantly increase the effectiveness of development aid at the same time, as well as to support the efforts made by the countries recipients by strengthening their governments and improving development performance.

They reaffirmed the commitments made in Rome - High Level Forum on harmonization in Rome (February 2003) - to harmonize and align the provision of development aid. They were encouraged that many donors and recipient countries are making aid effectiveness a top priority.

They manifested that using one's own national institutions and systems, where there is a good guarantee that aid will be used for approved purposes, increases aid effectiveness by strengthening the recipient country's sustainable capacity to develop, implement and account for its policies before its citizens and its parliament.

Recipients and donors expressed a shared interest in being able to monitor progress in improving national systems over time.

Meeting in London on international support for Colombia. London Declaration

On July 10, 2003, high representatives of the governments of Argentina, Brazil, Canada, Chile, Colombia, the European Union, Japan, Mexico, Norway, Switzerland and the United States of America and the European Commission met in London. the UN and its institutions, the Andean Development Corporation, the Inter-American Development Bank, the IMF and the World Bank to examine the situation in Colombia. All government representatives present reaffirmed their strong political support to the Government of Colombia and its efforts to solve the threats to democracy, the growing terrorism, drug trafficking, human rights violations human rights and international humanitarian law and the serious humanitarian crisis in the country.

The aid workers participating in the meeting decided to carry out a review and reorientation of their programs of cooperation and put a particular emphasis in contributing to the strengthening of state institutions, the alleviation of the humanitarian crisis, the protection of human rights and environmental activities and the creation of alternatives to the production of narcotics. Having taken note of the Colombian Government's priorities in these areas, they agreed to study how to make their cooperation programs more effective, in light of the current situation in Colombia.

Cartagena Declaration

On February 3 and 4, 2005, the second meeting of the International Coordination and Cooperation Roundtable for Colombia, in order to continue the political dialogue and cooperation initiated in London on July 10, 2003.

It was attended by senior representatives of the Governments of Argentina, Brazil, Canada, Chile, the United States of America, Japan, Mexico, Norway, Switzerland, the European Union and its member countries, the European Commission, the United Nations System, the Andean Development Corporation, the Inter-American Development Bank, the International Monetary Fund, the World Bank, and the Colombian Government.

The government representatives present, members of the G-24, reaffirming the London Declaration, underlined the importance of the processes that began there. Additionally, they recognized the efforts made, the mechanisms established, such as the Commission of Follow-up, and the achievements obtained by the Government of Colombia in relation to said Declaration.

They reaffirmed their support for the Colombian Government in its efforts to strengthen the welfare and security of all citizens, as well as in the fight against terrorism and illicit drugs. They recognized the progress that has been taking place in a democratic context, improving governance, promoting the institutional presence and control bodies to ensure respect for the law and human rights throughout the national territory and, when applicable, International Humanitarian Law.

They highlighted the importance of the discussion process for the construction of the International Cooperation Strategy, in which national public entities, the international community and civil society actively participated. At the same time, they valued the willingness of the Government of Colombia to provide spaces for democratic participation and encouraged it to continue working on this path.

They pledged to continue supporting, decidedly and concretely, the International Cooperation Strategy, in accordance with the priorities established in the six Thematic Blocks: “Forests; Reintegration into Civility; Productive and Alternative Development; Strengthening of the Social State of Law and Human Rights; Regional Development and Peace Programs; Forced Displacement and Humanitarian Assistance”. In this context, they recognized the governments' commitment to the Millennium Goals.

They highlighted the support provided by the international community and the importance of dialogue and cooperation between the Government of Colombia and civil society in all its diversity, including the private sector. They reaffirmed their commitment to the Government to continue working in a coordinated manner, with the participation of civil society and relevant international organizations, within the framework of the London process.

1.2. THECONSTITUTION POLITICS OF COLOMBIA AND INTERNATIONAL COOPERATION

Without prejudice to other provisions of this nature, which regulate some aspects related to international cooperation, which we will deal with in subsequent sections, in particular, the Political Constitution of Colombia contemplates that the foreign relations of the State are based on national sovereignty,

in respect for the self-determination of peoples and in the recognition of the principles of international law accepted by Colombia[20].

Likewise, some regulatory principles of international relations are enshrined, providing that the State will promote the internationalization of political, economic, social and ecological relations on the basis of equity, reciprocity and national convenience[21].

The Latin American integration has a special meaning for our Constituent Assembly, for whom the State will promote economic, social and political integration with other nations and especially with the countries of Latin America and the Caribbean through the signing of treaties based on equity, equality and reciprocity, create supranational organizations, even to form a Latin American community of nations. The law may establish direct elections for the constitution of the Andean parliament and the Latin American parliament[22].

The competence in this matter is assigned to the President of the Republic like Head of State, Head of Government and Supreme Administrative Authority, which directs international relations, enters into treaties or agreements with other States and entities of international law, which are submitted to the approval of Congress[23].

In relation to donations, article 62 of the Political Constitution of Colombia establishes that the destination of donations, made in accordance with the law for purposes of social interest, may not be varied or modified by the legislator, unless the object of the donation disappears, in which case the law will allocate the respective assets to a similar purpose.

20 Article 9. In relation to this issue, our Constitutional Court has stated that it is essential to point out, for the purposes of the matter under examination, the provisions of article 9. superior, according to which the foreign relations of the State are based "on the recognition of the principles of international law accepted by Colombia". This maximum fundamental – enshrined in this way by the Constituent Assembly – means neither more nor less than that our country fully adheres to the principles of international law that have been accepted, not only within the parameters of public treaties, whether bilateral or multilateral, or of the agreements signed within the framework of the international organizations to which the State has adhered –in particular, the United Nations Organization, UN–, but also those that derive from internationally consecrated uses and customs.

21 Article 226. On this matter, the Constitutional Court has stated in Judgment C-294 of 2004, with a presentation by Dr. Jaime Araújo Rentería that, given the needs, demands and opportunities posed by the concert of nations, it is up to the State to assume an active position against the internationalization of political, economic, social and ecological relations on the basis of equity, reciprocity and national convenience. That is, in the understanding that Colombia as a Nation is a subject of law in the ecumenical set of countries, which has certain needs that it can only resolve with the assistance of other States or entities of international law, it is up to it to promote individually or collectively the afore mentioned international relations, without losing sight of the fact that in the treaties or agreements that it celebrates, its rights as a Nation, as well as those of its inhabitants, must be duly protected. To which contractual clauses presided over by a sense of justice linked to the construction of a progressive international balance, to a cost-benefit relationship that provides balances favorable to national interests and the growing qualification of the national presence within the various spheres of action that comprise international events.

22 Article 227.

23 Article 189.

24 Through this law, the Administrative Department of Planning and Technical Services was created.

REGULATORY DEVELOPMENT OF INTERNATIONAL COOPERATION IN

1.3.1. BACKGROUND

1. Law 19 of 1958

With Law 19 of 1958[24], the National Council for Economic Policy and Planning was created, under the personal direction of the President of the Republic and among other objectives, with the aim of organizing the best use of the technical assistance provided by friendly countries and international entities.

President Alberto Lleras Camargo, through Decree 239 of January 31, 1959, assigned the Technical Assistance Section in coordination with the Projections and Objectives Section of Development and Control of Execution of Plans, the functions of examining and establishing the fields in which the assistance of the United Nations, foreign governments or international organizations is most urgent, and suggesting to the Council the way to procure it.

Regulatory backgrounds mentioned, which glimpsed the important need since that time, to order and prioritize the demand for cooperation and align it with the country's development goals and plans.

2. Special Division for International Technical Cooperation, DECTI

Within the regulatory background closest to the institutionality of international cooperation in Colombia we find article 78 of Decree 2410 of 1989, which attributed to the Special Division of International Technical Cooperation, DECTI, of the National Department of Planning, the functions of guiding, promoting and carrying out, in coordination with the pertinent organizations and entities, the formulation of policies, plans, programs and projects in matters of international technical cooperation, in accordance with the country's foreign policy and the requirements of the National Economic and Social Development Plan.

Likewise, article 14 of Decree 2126 of 1992 that attributed to the General Directorate of Cooperation of the Ministry of Foreign Affairs, the functions of articulating International Cooperation with the general objectives and strategies of the country's foreign policy and proposing guidelines of negotiation in the matter and guide, promote and coordinate with the corresponding entities the International Cooperation.

Later, in 1995, through Decree 1347 of 1995, the National Council for International Cooperation was created, with the function of recommending the general guidelines that should guide the demands for international cooperation and the horizontal cooperation actions carried out by the country; study and approve non-reimbursable international cooperation projects that are presented by national instances, through the Special Division of International Technical Cooperation of the National Planning Department; coordinate the specific cooperation needs required by the country, seek specific actions related to these and promote horizontal cooperation activities. Likewise, the Intersectoral Committee for International Cooperation was established.

3. Document CONPES 2768 of March 22, 1995

It contains both the analysis of the situation for that time of international cooperation, the reorientation of cooperation tending to support fundamental pillars of the National Development Plan, as well as the need to establish bodies that are in charge of ensuring the national coordination of International Cooperation that receives and grants the country.

Proposes the creation of an International Cooperation Agency attached to the National Planning Department.

4. The document CONPES 2968 of 1997

Brings a new orientation and approach to international cooperation through the definition of policy guidelines that allow the consolidation of cooperation as an instrument to support development[25].

5. The Colombian Agency for International Cooperation, ACCI

The intentions contemplated in the CONPES documents of the years 1995 and 1997 were crystallized with the issuance of Law 318 of 1996 and Decree 2807 of 1997, through which the Colombian Agency for International Cooperation - ACCI was created, and its statutes were established.

Said entity had in its organic structure the Board of Directors, a director and three deputy directorates for projects, programming and Technical Cooperation among developing countries, as well as an Administrative and Financial Division.

The ACCI was created with the legal nature of a public establishment of national order attached to the National Planning Department, with legal personality, its own assets and administrative autonomy, and its essential objective was the coordination, administration and promotion of all international, technical and financial, non-reimbursable, that the country receives and grants under the modality of official aid for development intended for public entities, as well as the resources obtained as a result of debt cancellation operations of a non-refundable nature of social or environmental content.

Through Decree 1320 of July 13, 1999, it was attached to the Ministry of External relationships.

Through Decree 1540 of June 6, 2003, it was attached to the Administrative Department Office of the Presidency of the Republic.

It should be noted that under Law 318 of 1996, all State entities were obliged to channel all international cooperation requests through the ACCI, and its board of directors could establish exceptions to this obligation, under the condition that the entities covered by this type of exception would be coordinated for the pertinent effects by the cooperation agency and will maintain a permanent flow of information with it. Said rule established that international cooperation plans, projects and programs will be proposed to potential cooperators, exclusively by the Colombian Agency for International Cooperation if they had previously been approved by the board of directors. This approval came after the board's assessment of the recommendations contained in the previous study of the projects, plans and programs that corresponded to the Intersectoral Committee for International Cooperation and to the competent dependency in the agency, in accordance with articles 8 and 18 of this Law.

25 These documents can be consulted on the website of the National Planning Department: http://www.dnp.gov.co

1.3.2. CURRENT REGULATORY FRAMEWORK

In addition to the constitutional regulations that we have outlined, currently the regulatory framework for international cooperation in Colombia is given by Decree 1942 of July 11, 2003 and Decree 2467 issued by the President of the Republic on July 19, 2005, based on the constitutional and legal powers, especially those indicated in number 15 of article 189 of the Political Constitution and in paragraphs b) and e) of article 2 of Law 790 of 2002. This regulatory framework, together with Presidential Directive No. 01 of 2008 and the regulations that assign functions to the Ministry of Foreign Affairs and the Administrative Department of the Presidency of the Republic, DAPR, define the institutionality of international cooperation in the country.

It is worth distinguishing between two modalities of international cooperation, in order to determine the degree of competence of SOCIAL ACTION and other entities about them:

a) Reimbursable cooperation (concessional credits), which is treated as credit and therefore must adhere to the existing regulation for the loan, in whose management SOCIAL ACTION intervenes, but whose approval and contracting process is the responsibility of the National Planning Department and the Ministry of Finance and Public Credit.

b) non-refundable cooperation for which SOCIAL ACTION has coordination, articulation and promotion in the country.

1. The Ministry of Foreign Affairs

In accordance with the provisions of Decree 110 of 2004, the Ministry of Foreign Affairs is the governing body of the Foreign Relations Sector and is responsible, under the direction of the President of the Republic, for proposing, guiding, coordinating and executing Colombia's foreign policy and managing the foreign services of the Republic.

In particular, article 1 of Decree 1942 of July 11, 2003 assigned to the Ministry of Foreign Affairs the function of formulating and guiding the international cooperation policy in its different modalities.

From the foregoing, it can be deduced that the functions assigned by the President of the Republic to the Ministry of Foreign Affairs are of a general nature and mainly to formulate and guide policies and coordinate foreign relations, the State Agencies and the activities of the Public Administration, in all its orders and levels.

Be noted how Decree 2467 of 2005, when assigning functions to SOCIAL ACTION, uses the expressions "coordinate the development of the cooperation policy established by the Ministry of Foreign Affairs", "manage and promote non-reimbursable international technical and financial cooperation under the direction and coordination of the Ministry of Foreign Affairs", in in the sense that it is the entity that gives the guidelines in matters of international cooperation.

Under the previous parameters, functional harmony must then be interpreted and found between the Ministry of Foreign Affairs as an entity mainly for the formulation and orientation of policy in the field of international cooperation; the DAPR, who is responsible for the orientation, control and general evaluation of the activities of SOCIAL ACTION and guides and coordinates the fulfillment of the functions in charge of the same and, thirdly, harmony of the previous roles and those of SOCIAL ACTION, clearly defined in Decree 2467 of 2005, which even though it enjoys administrative autonomy, is subject to political control and the supreme direction of the administrative body to which it is attached.

In this regard, numeral 16 of article 189 of the Constitution Policy establishes that it corresponds to the President of the Republic, as the supreme administrative authority, to modify the structure of the Ministries and other national administrative bodies, subject to the principles and general rules defined by law. Law 489 of 1998 established, within said principles and general rules, that duplication of functions between public entities should be avoided, which, as has been seen, do not exist in matters of international cooperation, given the specific role that the norm has entrusted to each of them.

In the final chapter of this publication, the functions assigned to the Ministry of Foreign Affairs, the Vice Minister of Multilateral Affairs and the Directorate of International Cooperation of the same can be consulted.

2. The Administrative Department of the Presidency of the Republic, DAPR

Article 2 of Decree 1942 of 2003 established that the DAPR, under the direction of the Ministry of Foreign Affairs, will participate in the administration and promotion of international, technical and financial cooperation.

In accordance with the provisions of articles 41 and 68 of Law 489 of1998, the DAPR is responsible for the orientation, control and general evaluation of the activities of SOCIAL ACTION and guides and coordinates compliance of the functions in charge of it.

3. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION

Through Decree 2467 of July 19, 2005, the public establishment was merged “Colombian Agency for International Cooperation, ACCI” to the public establishment “Social Solidarity Network”, which will hereinafter be called the Presidential Agency for Social Action and International Cooperation, Social Action.

The Presidential Agency for Social Action and International Cooperation, Social Action, conserved the legal nature that the Colombian Agency for International Cooperation, ACCI, had, a public establishment, of the national order, endowed with legal status, administrative autonomy and its own assets, attached to the Administrative Department of the Presidency of the Republic.

Additionally, the aforementioned decree, considering that the resulting entity will develop programs aimed at serving and

26 Article 68 of Law 489 of 1998.

assist the vulnerable and vulnerable population and that the Investment Fund for Peace, FIP, executed programs to serve this population, that is, poor families, families linked to illicit crops and families affected by violence and marginality, established that the Investment Fund for the Peace, FIP, must function in SOCIAL ACTION.

The Internal Statutes of SOCIAL ACTION were adopted by the Board of Directors, through Agreement 16 of May 8, 2006.

Those aspects of a missionary nature are immediately highlighted, which in relation to Law 318 of 1996 are considered relevant, renovating and fruit of the merger of the Social Solidarity Network and the Colombian Agency for International Cooperation, ordered by Decree 2467 of 2005.

- Functions that under Law 318 of 1996 were attributed to the Board of Directors, such as approving international cooperation programs, projects and activities that the country wishes to receive or grant and adopt the methodologies and procedures that the corresponding agencies must observe of the agency to carry out the study of programs and projects and the approval of the functions manuals, passed to the General Director, maintaining the natural function of this collegiate body, of policy guidance and monitoring of the entity's management.

- With Decree 2467 of 2005, the reference to the channeling of all the requests for cooperation that the country receives was eliminated, since within the object of the ACCI, it was found that all State entities are obliged to channel all of the cooperation international requests through the Colombian Agency for International Cooperation. The foregoing was unaware of the multiplicity of modalities and actors of international cooperation and that they act at the national, territorial level and with the private sector, a function that was not in accordance with the structure of the entity and the level, which is of the national order. In this sense, this ambitious objective later had to be tempered, adjusting it to the reality of the different processes of international cooperation, remaining the power to coordinate it and the support to national, territorial and private public entities in relation to official aid to the development, as its main mission.

- The Intersectoral Committee for International Cooperation was eliminated, whose composition by diverse and numerous entities made its convocation impossible; the role assigned to the aforementioned committee is replaced by coordination and direct agreement with the public sectors and entities of each of the programs or projects, which has been successful.

- Private international cooperation. Official aid resources to development, given Colombia's status as a middle-income country, are increasingly scarce and the country's social and development needs are growing. Given this reality, it was necessary to identify new sources and mechanisms that make it possible to establish synergies between the public and the private in terms of cooperation for the agreement and execution of projects and the attainment of resources for them, which is why extended mission outreach, primarily in:

a) The identification, analysis and dissemination of new sources of international cooperation, including decentralized cooperation, that offered by the private sector, churches, unions, companies and business foundations, and non-governmental organizations, so that national entities, public or private, can take advantage of as possibilities for technical or financial cooperation.

b) The promotion and generation of alliances with national entities, public or private, to obtain national and international cooperation resources on priority issues for social action and the country's development and for the articulation in the execution of international cooperation programs and projects, in order to enhance the resources and generate greater impact on the target population.

3.1. General structure of SOCIAL ACTION

In accordance with the provisions of Decree 2467 of 2005, the general structure of the Presidential Agency for Social Action and International Cooperation, Social Action, is the following:

BOARD OF DIRECTORS
OFFICE OF THE DIRECTOR GENERAL
SOCIAL SOLIDARITY NETWORK MANAGEMENT
Sub-directorate for Attention to Victims of Violence
Sub-directorate for Attention to Displaced Population
INTERNATIONAL COOPERATION DIRECTORATE
Sub-directorate of New Sources of International Cooperation
Sub-directorate of Official Development Assistance

3.2. Competence of SOCIAL ACTION in matters of international cooperation

The following are the functions that consecrate the functional competence of SOCIAL ACTION, they grant it a broad spectrum of action, but at the same time they delimit the orbit in which it can exercise its powers in relation to public and private international cooperation in the country.

General Functions

In relation to international cooperation, the Presidential Agency for Social Action and International Cooperation, Social Action, has the following functions:

1. Coordinate the development of the policy that in terms of cooperation the Ministry of Foreign Affairs sets.

2. Manage and promote non-reimbursable international technical and financial cooperation under the direction and coordination of the Ministry of Foreign Exterior Affairs.

3. Coordinate and articulate with the potential contributors and recipients of international public and private cooperation, the non-reimbursable technical and financial cooperation that the country receives and grants, as well as the resources obtained as a result of debt cancellation with a social or environmental nature.

4. Support the Ministry of Foreign Affairs in the negotiation processes of framework agreements, treaties or conventions on cooperation and complementary international cooperation agreements or conventions, non-refundable technical or financial.

5. Manage the resources, plans, programs and projects of non-reimbursable international technical and financial cooperation or private cooperation carried out by the country, when appropriate, under the guidelines that the Ministry of Foreign Affairs imparts.

6. Promote the improvement of the living conditions of the poorest and most vulnerable population of the country, through the coordination and execution of programs and projects with resources from national or international cooperation sources in accordance with the policy determined by the National Government.

The International Cooperation Directorate

The functions of the International Cooperation Directorate are the following:

1. Advise the Director General in obtaining international technical and financial cooperation of a non-reimbursable nature, in order to support the execution of priority programs and projects for the development of the country.

2. Coordinate the identification of priority areas and issues at the national and regional level to which international cooperation should be directed, also those experiences and national capacities to be offered in abroad cooperation.

3. Coordinate analysis and research on the policies, guidelines, trends and programs of the cooperation that serve to guide strategic development and make the results obtained available to public or private national entities, so that they can take advantage of the possibilities of technical or non-refundable financial cooperation.

4. Advise the Director General in the negotiation with the sources, the programming of the cooperation that the country receives or grants, as well as the conditions of implementation of the respective programs, projects and activities, previously approved by the Director General, including the Technical Cooperation between Developing Countries (TCDC) and triangulation operations.

5. Establish an international cooperation information system that articulates the different public and private actors of cooperation in Colombia.

6. Coordinate guidance and advice to the competent public entities, sources and executors, on the implementation of the most effective technical, financial and legal mechanisms and modalities for the formulation, negotiation, execution and monitoring of international cooperation resources, in order to improve their management in a coordinated and consistent manner with national policies.

7. Submit the study for the consideration of the General Director of the entity and concept on cooperation plans, programs and international projects,

presented by public entities of the national or territorial order, as well as those presented by NGOs that require endorsement or not objection, in order to decide on its feasibility.

8. Direct monitoring and periodic follow-up of the execution of international cooperation programs and projects, including TCDC and triangular cooperation actions, with the support of the national executing entities and the territorial units of the entity.

9. Submit for the consideration of the Director General the programming of activities, plans and projects to be carried out charged to the resources of the International Cooperation and Assistance Fund (FOCAI).

Sub-directorate of New Sources of International Cooperation

The functions of the Sub-directorate of New Sources of International Cooperation are the following:

1. Carry out the identification, analysis and dissemination of new sources of international cooperation, including decentralized cooperation, that offered by the private sector, churches, unions, companies and business foundations and non-governmental organizations, so that national entities, public or private, can use as technical possibilities or financial cooperation.

2. Establish contact with new sources of international cooperation and promote the generation of alliances with national, public or private entities, to obtain national and international cooperation resources on priority issues for social action and the country's development.

3. Support the creation and strengthening of cooperation networks in the private sector, civil society, public entities at the national or territorial level, national and international, and coordinate their participation in the mechanisms for monitoring international cooperation.

4. Coordinate the generation of alliances with private organizations, NGOs and civil society organizations, for the articulation in the execution of international cooperation programs and projects, in order to enhance resources and generate greater impact on the targeted population.

5. Study and cast concept, with the support of the competent sectoral or territorial entities, on international cooperation programs, projects and activities presented by NGOs, private or civil society organizations, which require endorsement, or no objection requested by an agency or international cooperation body.

6. Guide the missions of the cooperators for the identification, monitoring and evaluation of projects or activities of non-governmental, decentralized cooperation or other non-traditional forms of cooperation.

7. Carry out analysis on the evolution of aid from new sources of international cooperation, its trends, criteria and operating mechanisms and disclose them to relevant national and international entities.

Sub-directorate of Official Development Assistance

The functions of the Sub-directorate of Official Development Assistance are the following:

This Sub-directorate was contemplated in Law 318 of 1996 and continues with the functions of coordination and promotion of the official development aid that the country grants and receives.

1. Advise and guide national entities, on the criteria, modalities, methodologies and procedures defined with the cooperating sources of an official nature, for the identification, formulation, execution and monitoring of programs, projects and activities of non-reimbursable international technical and financial cooperation, including horizontal and triangular cooperation.
2. study and cast concept, with the support of the competent sectoral or territorial entities, on the programs, projects and activities of international cooperation presented by the public entities of the national or territorial order, including those of horizontal and triangular cooperation.
3. Establish contacts with official cooperating sources to obtain information on their respective criteria, lines, modalities, processes and procedures that must be met by international cooperation initiatives, programmable or non-programmable.
4. Arrange with official cooperating sources the articulation of the offer and demand of existing international cooperation, in accordance with the priority thematic areas defined.
5. Coordinate with the Ministry of Foreign Affairs the preparation of cooperation issues to be included in treaties, agreements or conventions and support the processes for their negotiation.
6. Guide the missions of the cooperators for the identification, follow-up and evaluation of the projects or activities of Official Development Assistance.
7. Apply the mechanisms and methodologies for monitoring and evaluation of international cooperation programs, projects and activities from Official Development Assistance, with the support of executor entities and cooperating sources.
8. Coordinate the generation of alliances with public and private entities and organizations of the national, regional and local order, for the articulation in the execution of international cooperation programs and projects from official development aid, in order to leverage resources and generate greater impact on the targeted population.
9. Carry out the programming of activities to be financed with the International Cooperation and Assistance Fund (FOCAI), monitor their implementation and prepare reports on their execution.

The International Cooperation and Assistance Fund, FOCAI

Due to its medium level of development, Colombia is a country with high potential to offer goods and services to countries of equal or lesser relative development, as well as to developed countries, which constitutes the so-called horizontal cooperation.

Much of the cooperation granted by the country translates into technical cooperation, which consists of the transfer of scientific knowledge, techniques and technologies, through the training of human resources in modalities such as the exchange of experts, seminars and workshops, between Colombian officials and of the countries offering and demanding cooperation.

Cooperation between developing countries is carried out through activities or projects that are agreed upon within the framework of the mixed commissions with each country or other consultation bodies, which constitute commitments of international character for the intervening States.

The projects are not carried out in one country, but in the two intervening countries, that is Colombia and the country in developing correspondent and both parties will make contributions for the execution of the project, generally, under the principle of shared costs, which are assumed with the resources of the Cooperation Fund and International Assistance.

The International Cooperation and Assistance Fund, created by Law 318 of 1996, is part of SOCIAL ACTION and functions as a special account, without legal status, of Social Action, in order to support technical and financial cooperation actions non-reimbursable and international assistance that Colombia performs with other developing countries.

Chapter 2

The right
of the Treaties

2.1. THE VIENNA I AND VIENNA II

The Vienna Convention on the Law of the Treaties between States, which has been called by the Constitutional Court "Vienna I", and the Vienna Convention on the Law of Treaties and International Organizations, called "Vienna II", these treaties of 1969 and 1986, respectively, are largely codifications of customary practices in the field of international treaties. The two Conventions have the same purpose, since both seek to codify the Law of Treaties, as formal sources of International Law.

The difference between the two, as established in article 1 of the Conventions, is that Vienna applies specifically to States as subjects of International Law, while Vienna II regulates Treaties between States and international organizations or among international organizations.

This codification of the Law of Treaties, in which international organizations are involved, is a foreseeable and reasonable development of Contemporary Public International Law.

Article 2 of Vienna I and Vienna II define an International Organization “as an intergovernmental organization”. International organizations are today subjects of International Law different than States; the organizations regulated by the Convention are born by agreements between the States. However, the organization acquires its own international subjectivity, different from that of the States that gave birth to it, for which its will is autonomous and legally distinct from those of the States that compose it.

The Constitutional Court[27] has said that the recognition of legal personality to international organizations does not mean that they enjoy a legal status identical to that of States. Indeed, while all States are equal before International Law and all have full capacity to conclude treaties, an international organization is the result of a pact of will between the States, an act that models its legal figure and confers very marked individual characteristics that limit their resemblance to any other international organization. This has been clearly stated by the International Tribunal of Justice[28], who specified that “while a State

27 Judgment C-400 of 1998.

28 ICJ Opinion on Reparation for Damages Sufferedat the service of the United Nations, Recueil 1949, p. 180 (cited in Judgment C-400 of 1998)

possesses all international rights and duties, the rights and duties of an entity such as the United Nations must depend on their purposes, as stated or implied in their constitutive texts and developed in practice.

The rules that regulate the celebration and execution of the Treaties in which said organizations participate are in part different from those that govern the treaties between States, differences that derive precisely from the specificities of international organizations: Capacity, formation of the will and expression of consent.

The purpose of Vienna II facilitates international cooperation, since having such organizations a different legal nature from that of the States, with special organizational capacity and rules, creates a new public instrument, through which the law of Treaties in relation to international organizations is codified.

The Constitutional Court[29], by declaring Law 406 of October 24, 1997, through which the Vienna Convention on the Law of Treaties between States and International Organizations or between international organizations is approved, and likewise, the aforementioned Convention, did so with the disclaimer that the Government of Colombia formulate, when depositing the instrument of ratification, the following reservations and the following interpretative declaration:

"Regarding the form of consent manifestation to be bound by a treaty (the Convention establishes that the obligation may be manifested through signature, exchange of instruments, ratification, acceptance, approval or accession, or in any other manner that may have been agreed upon), Colombia specifies that its Plenipotentiary Representative may only express the consent of the Colombian State once the Treaty has been approved by Congress and reviewed by the Constitutional Court".

Likewise, the Court stated that they are only susceptible of provisional application by Colombia, without prior approval by Congress and review by the Constitutional Court, the Treaties of an economic and commercial nature, agreed in the scope of the International Organizations that so dispose.

In relation to Article 27 of the Convention on Internal Law and the Observance of Treaties, which states: a party may not invoke the provisions of its internal law as justification for non-compliance with a Treaty, the Judgment stated that Colombia accepts that a State cannot invoke the provisions of an Internal Law as a justification for non-compliance of the Treaty, on the understanding that this norm does not exclude judicial control of the constitutionality of the laws approving the Treaties.

The justification for the above condition has its constitutional basis in numeral 10 of article 241 of the Constitution, which establishes the competence of the Constitutional Court to definitely decide on the affordability of international treaties and the laws that approve them. To this end, the Government will send them to the Court within six (6) days following the enactment of the law.

Any citizen may intervene to defend or challenge its constitutionality. If the Court declares them constitutional, the Government may carry out the exchange

29 Judgment C-400 of August 10, 1998, Judge Rapporteur: Dr. Alejandro Martínez Caballero.

of notes and otherwise they will not be ratified. When one or several norms of a multilateral treaty are declared unenforceable by the Constitutional Court, the President of the Republic may only express consent by formulating the corresponding reservation.

The purpose of Vienna II harmonizes with the Political Charter of 1991, since the Constitution not only promotes international relations, on the basis of fairness, equality, reciprocity and respect for national sovereignty and the self-determination of peoples (CP, Art s 9 and 226), but explicitly recognizes the existence of international organizations or entities[30]. (CP, art ts. 150 ord. 16 and 189 ord. 2°). Moreover, the Constitution even accepts the creation of supranational integration organizations, to which certain powers of the State can be transferred, to strengthen economic integration and promote the creation of a Latin American community of nations (CP, arts. 150 ord 16 and 227), which means that the Constitution distinguishes between international cooperation organizations, that is, those that seek to harmonize the interests of the member states, but without affecting their status as sovereign states and integration organizations, to which the Charter authorizes the transfer of certain powers originally residing in the state. For this reason, the Court[31] has declared that Community Law is distinguished by being a law that points towards integration and not only towards cooperation.

Therefore, the existence and regulation of the activities of international organizations aimed at promoting international cooperation and integration are consistent with the Charter, since it promotes these values since “Cooperation and integration -based on the broader notion of solidarity international-, in its original sense, pursues the union of countries around common problems or affinities, whose consequences transcend national borders”.

Therefore, Vienna II offers a regulation substantially similar to Vienna I, but with the obvious adjustments derived from the peculiarities of international organizations. Therefore, it is not surprising that both conventions have similar legal content, even at a formal level. Thus, both conventions consist of a preamble, around 80 articles and an annex on arbitration and conciliation procedures. The articles are organized into identical parts and sections, since both conventions begin by defining their terms and its scope (part I) to then regulate the celebration and entry into force of the treaties (part II).

Vienna I is not only in force for our country since 1985, thirty days after the deposit of the instrument of ratification, prior approval by Congress through Law 32 of 1985, but also, it is a treaty of special importance in the Colombian legal system. Indeed, Vienna I is largely a codification of the principles of International Law of treaties, and Article 9 of the Constitution states that our State guides its foreign relations based on "the principles of international law accepted by Colombia”. This means that the normative contents of the Law of Treaties codified in Vienna I are part of the accepted principles of international law

30 In relation to the creation of supranational bodies, the Constitutional Court has stated in the sensethat “However, the process of internationalizationof the political, economic, social and ecological relations of Colombia cannot be assumed as the mere sum of the wills of some countries that decide to agree mechanically with others, the Constitution itself claims and makes clear the integrating purpose that must nurture the relations of our country with other nations in the broad economic, social and political spectrum. For which purposes, and through the conclusion of treaties that safeguard fairness, equality and reciprocity, the Charter authorizes the participation of the State in the creation of supranational organizations, which on the one hand imply a hierarchy to be respected and obeyed by Colombia. and of the other Member States, and on the other, the reciprocal subjection of all the States to the agreements that are formalized in said organisms, which derives in a logical adaptation of the national legislation to the guidelines of the supranational clauses agreed upon”. Judgment C-294 of 2004.

31 Judgment C-400 of 1998

by Colombia, for which they serve as a constitutional foundation for norms of similar content and scope. Therefore, since it has already been determined that the purpose of Vienna II is constitutionally legitimate, it is reasonable to conclude that when that convention is limited to applying to treaties in which international organizations participate identical standards to those included in Vienna I in relation to treaties between States, such norms find a certain constitutional foundation in article 9 of the Charter.

For its part, and for elementary reasons of legal security, article 4 states that Vienna II is not retroactive, for which its clauses apply only to treaties that are concluded after its entry into force; the rules that govern the formation of a legal act -such as treaties- are those in force at the time of its conclusion, for which Vienna II could hardly have a retroactive effect, nor does Vienna I, which contains the same restriction, which means that these conventions do not cover treaties concluded by Colombia before their effective date.

The norms of Customary International Law continue to have an independent existence and applicability in relation to the norms of Conventional International Law even when both types of law have identical content. However, this precision regarding the temporary validity of Vienna I and Vienna II is important, since it means that such conventions cannot be mechanically applied to the treaties approved prior to them, since although some of their contents include customary principles universally accepted, other provisions, on the contrary, attempt precisely to solve sharp legal disputes.

The original texts of the Vienna Convention are in the Chinese, Spanish, French, English and Russian languages. These originals are in the possession of the Secretary General of The United Nations.

The Vienna Convention was opened for signature by all member States of the United Nations or members of any specialized agency or the International Atomic Energy Agency, as well as any State party to the Statute of the International Court of Justice and of any other State invited by the General Assembly of the United Nations, as follows: Until November 30 1969 at the Federal Foreign Office Affairs of the Republic of Austria, and later, until April 30, 1970, at the United Nations Headquarters in New York.

This Convention was open for accession by any State belonging to the categories mentioned above. The instruments of accession are deposited in power of the Secretary-General of the United Nations.

2.2. THE APPROVAL OF THE TREATIES IN COLOMBIA BEFORE THE ENTRY INTO FORCE OF THE VIENNA I AND VIENNA II CONVENTIONS

We consider it important to review two legislative background in relation to the approval of treaties in Colombia prior to the entry into force of the Vienna Convention.

Law 7 of November 30, 1944, "on the validity in Colombia of International Treaties and their publication", which established that "The Treaties, Conventions, Agreements, Arrangements and other international acts approved by Congress, in accordance with Articles 69 and 116 of the Constitution, will not be considered in force as internal laws, until they have been perfected by the Government in its capacity as such, through the exchange of ratifications or the deposit of the instruments of ratification, or another equivalent formality"[32] and that "As soon as the international bond that binds Colombia through a Treaty, Agreement, Convention, etc., is perfected, the Executive Organ will dictate a decree of promulgation, in which the text of the Work or Agreement in reference will be inserted and, where appropriate, the text of the reservations that the Government wishes to formulate or maintain at the time of deposit of ratifications.

Law 24 of May 22, 1959, whereby authorization was granted to the National Government to enter into agreements or contracts with the duly authorized representatives of specialized international organizations or agencies or with foreign or international entities, with the specific purpose of ensuring the use or the provision of technical assistance or the provision of elements or other facilities required for the formulation or execution of plans and programs for economic, social, cultural, health development or other related matters. For their validity, these agreements only required the approval of the President of the Republic, prior favorable opinion of the Council of Ministers[33]. In light of the provisions of this law, framework cooperation agreements or conventions have been signed with various States, which are in force today.

Pacta sunt servanda not only does it mean that the treaties must be formally complied with, but must be complied within good faith, that is, with the will to make them effective, and this international custom, today a fundamental norm of international law, has been observed by Colombia and the States with which it has signed the mentioned agreements.

The Honorable Constitutional Court has stated that international law is made up of rules that were originally produced by repetitive acts between States, whose binding nature and applicability is determined according to the internal legal system and the decisions adopted by the competent bodies of each State. The elaboration of said norms obeys, then, to the presence of usual and repetitive acts over time, through which the subjects of public international law consciously accept their legal force and, therefore, their obligatory nature and general effectiveness. All this is part, then, of what is known as the "custom", which is constituted in a generating piece of the

32 Articles 69 and 116 of the Political Constitution of 1886 correspond to articles 150, numeral 16; 189, numeral 2; 224 and 241, numeral 10, of the Political Constitution of 1991.

33 Based on this authority, agreements have been approved such as the General one for economic, technical and similar aid, between the Government of Colombia and the Government of the United States of America, in force today and it is the framework under which cooperation has been developed international with the mentioned State; the basic technical cooperation agreement between the government of the Republic of Colombia and the government of Belgium, signed in Brussels on October 19, 1971; Technical and scientific cooperation agreement between Ecuador and Colombia, signed on October 18, 1972; Technical and scientific cooperation agreement between the government of the Republic of Colombia and the government of the French Republic, signed on September 18, 1963; with the Kingdom of the Netherlands, Agreement on technical cooperation,

principles of international law and that, consequently, as was said, finds a basis within Colombian law in article 9 of the Constitution[34].

23. TERMINOLOGY OF THE TREATIES

The Vienna Convention, for the purposes of treaties, defines some of the terms that govern international relations, making it clear that it does so without prejudice to the use of those terms or the meaning that may be given to them in the domestic law of any State.

Treaty: An international agreement concluded in writing between States or between them and international organizations and governed by International Law, whether it is established in a single instrument or in two or more related instruments and whatever its particular denomination may be.

Ratification, Acceptance, Approval and Accession: Depending on the case, the international act so named by which a State establishes in the international arena its consent to be bound by a Treaty.

Full Powers: A document emanating from the competent authority of a State and by which one or more persons are designated to represent the State in the negotiation, adoption or authentication of the text of a Treaty, to express the consent of the State to be bound by a Treaty or to perform any other act with respect to a Treaty.

Booking: A unilateral declaration, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a Treaty, for the purpose of excluding or modifying the legal effects of certain provisions of the Treaty in their application to this status.

Negotiating State: A State that has participated in the elaboration and adoption of the text of the Treaty.

Contracting State: A State that has consented to be bound by the Treaty, whether or not the Treaty has entered into force.

Part: A State which has consented to be bound by the Treaty and with respect to which the Treaty is in force.

Third State: A State that is not a party to the treaty.

International Organization: An intergovernmental organization.

The terms used in the Vienna Convention are without prejudice to the sense that can be given to them in the Internal Law of any State.

The Ministry of Foreign Affairs[35] defines some terms in accordance with the practice of the States and international organizations, giving thus generic indications on the way in which they are used in their correspondence and diplomatic documents, namely:

Treaty: It is the classic term that is usually reserved for the most solemn and formal instruments that

34 Ref.: File D-798. Demandof unconstitutionality against article 538 (partial) of Decree 2700 of 1991. Magistrate Speaker: Dr. Vladimiro Naranjo Mesa, April twenty (20), nineteen ninety-five (1995).

35 The "Guide for the drafting of final clauses in bilateral treaties" prepared by the Legal Office has been taken as a reference for this section.
– Treaties Area of the Ministry of Foreign Affairs. June 2000.

celebrate a state. It is customary in bilateral instruments on important matters, such as general treaties of friendship and cooperation and boundary treaties.

Examples: "Treaty of Limits and Navigation of Common Rivers"; “General Treaty of Friendship and Cooperation”; “Maritime Delimitation Treaty”.

Agreement: It is used interchangeably with "treaty", although it has a slightly less formal connotation. It is usually used in the economic and commercial areas and in specific cooperation matters. At the multilateral level, it is widely used, as well as "convention", to refer to general treaties of a normative nature, that is, of codification of Public and Private International Law.

Examples: “Commercial Agreement”; “Technical and Scientific Cooperation Agreement”; “Vienna Convention on Diplomatic Relations”.

Even when it refers to the Constitution of 1886 and the reforms of 1945 and 1968, it is interesting to note, in relation to the difference between the expressions "treaties" and "agreements", a pronouncement of the Supreme Court of Justice[36] on the occasion of the enforceability of Law 24 of 1959, which we must consider in force, given that the same regulation is preserved in the 1991 Constitution. The Court stated that the difference between treaties or agreements highlighted in the 1886 Constitution, but not specified by the constituent, disappeared in the 1945-1968 reform with the power of the President to enter into "Treaties or Agreements" (Art. 120-20) and the function of Congress to approve or disapprove “treaties or agreements that the Government celebrates with other States or with entities of international law” (76-18). Today there is that difference constitutionally. The Court is in charge of distinguishing between the contracts or agreements that the Government celebrates with individuals, companies or public entities in which the Nation has an interest, and the treaties or agreements that it also celebrates with other States or entities of international law. These are part of the function that corresponds to the President as the supreme administrative authority; these contracts are guaranteed only with the economic responsibility of the State; and although the contracting parties are foreign or international organizations or agencies, the ties contracted are not of a political nature.

On the other hand, treaties or agreements with other States or entities of international law are based on articles 76-18 and are celebrated by the President as Head of State, article 120-20; and in these, the state acts as the subject of international right.

Each one has its own special processing, the contracts are concluded with the prior authorization of Congress (number 9 of article 150 of the 1991 Constitution); This is not the case for treaties, which require subsequent approval by the legislative branch (article 224 of the 1991 Constitution).

Agreement: It is the least formal of the general denominations. It is often used when dealing with instruments of a simplified nature, such as visa waiver agreements. It is also widely used in relations with international organizations (headquarters agreements).

Examples: “Agreement on Suppression of Visa in Diplomatic and Official Passports”, “Headquarters Agreement between Colombia and the International Committee of the Red Cross”.

36 Judgment of June 3, 1975. Judge Rapporteur Dr. Luis Sarmiento Buitrago.

Memorandum of Understanding: Usually used to denote an agreement in simplified form in which smaller commitments or commitments that develop pre-existing instruments are included. It is also widely used for so-called agreements or inter-institutional agreements. If the denomination used is "MEMORANDUM OF INTENT", it is usually instruments in which real obligations of behavior are not contemplated, but rather programmatic clauses with a wording that excludes imperative terms and that usually contain simple exhortations or declarations of intention.

Examples: “Memorandum of Understanding on Consultations between Ministries of Foreign Affairs”; “Memorandum of Understanding on Judicial Cooperation"; “Memorandum of Intent between Aeronautical Authorities”.

Protocol: It usually designates either a very formal bilateral treaty or either an additional or complementary instrument to a previous treaty.

Examples: “Rio de Janeiro Protocol”; “Protocol of Reforms to the Charter of the OEA”.

Other denominations are: Pact, Charter, Act, Statute, Program, Instrument, Exchange of Notes.

2.4. CELEBRATION AND ENTRY INTO FORCE OF THE TREATIES

Capacity of States to conclude Treaties

Every State has the capacity to conclude treaties. The outstanding characteristic of international treaties is that they bind States internationally and it is these States that have international legal personality, that is, they have full capacity to enter into international treaties, an essential requirement for it to be considered as an international instrument in the terms of the “Vienna Convention on the Law of Treaties”

In this order of ideas, only the Government of Colombia, on behalf of the Republic of Colombia, can enter into international treaties, because it is a subject of international law and because the Colombian State has international legal personality, that is, full capacity.

Full Powers

For the adoption, the authentication of the text of a treaty, to express the consent of the State to be bound by a Treaty, it will be considered that a person represents a State:

a) If the appropriate full powers are presented, or

b) If it appears from the practice followed by the States concerned, or from other circumstances, that the intention of those States has been to consider that person representative of the State for those effects and dispense with the presentation of full powers.

By virtue of its functions, and without having to present full powers, it will be considered who represent their state:

a) Heads of State, Heads of Government and Ministers of Foreign Affairs, for the execution of all acts relating to the conclusion of a treaty.

b) Heads of diplomatic missions, for the adoption of the text of a treaty between the accrediting State and the State to which they are accredited.

c) The representatives accredited by the States before an International Conference or before an international organization or one of its organs, for the adoption of the text of a Treaty in such conference, organization and organ.

Subsequent confirmation of an act executed without authorization. An act relating to the conclusion of a treaty executed by a person who cannot be considered authorized to represent a State for that purpose shall have no legal effect unless subsequently confirmed by that State.

Adoption of the Text

The adoption of the text of a Treaty at an international conference shall be effect by a two-thirds majority of the States present and voting, unless those States decide by an equal majority to apply a different rule.

Text Authentication

The text of a treaty shall be established as authentic and final:

a) Through the procedure prescribed in it or agreed upon by the States that have participated in its elaboration.

b) In the absence of such a procedure, by the signature, the signature “to consult” or the initialing by the representatives of those States in the text of the Treaty or in the Final Act of the Conference in which the text appears.

Forms of manifestation of Consent to be bound by a Treaty

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or in any other manner that may be agreed.

Consent to be bound by a Treaty expressed by signature

The consent of a State to be bound by a Treaty is expressed by the signature of your representative:

a) When the treaty provides that the signature shall have that effect;

b) Where it is otherwise established that the negotiating States have agreed that the signature has that effect;

c) When the intention of the State to give that effect to the signature follows from the full powers of its representative or has been manifested during the negotiation.

It is the obligation to comply in good faith with international norms and obligations. All international regulations and obligations must be complied with in good faith

2.5 OBSERVANCE OF THE TREATIES "PACTA SUNT SERVANDA"

by the subjects to whom they are opposable. It is a fundamental principle, universally recognized, repeatedly evoked by international jurisprudence and, today, enunciated by texts as significant as the Charter of the United Nations and the Declaration of Principles regarding friendly relations and cooperation among States.

In the case of treaties, this principle is set forth in article 26 of the Vienna Conventions of 1969 and 1986 under the rubric "pacta sunt servanda".

Furthermore, Article 27 of the 1969 Convention unequivocally states that a State may not invoke the precepts of its domestic law as justification for breach of a treaty.

This essential principle of International Law of "pacta sunt servanda", according to which every treaty that enters into force binds the parties and must be fulfilled by them in good faith, constitutes the essential basis of the Law of Treaties and, in general, of the harmonious and peaceful functioning of the international community.

For this reason, some theorists have considered that this norm represents the basic principle, the fundamental and most elementary norm of the entire legal system of International Law, on which the validity of the rules of this law depends.

"Pacta sunt servanda" does not only mean that treaties must be formally complied with, but must be fulfilled in good faith, that is, with the will to make them effective. In Colombia, the principle of complying in good faith with its international obligations has evident constitutional support in article 83 of the Political Constitution, since the Charter states that the actions of the Colombian authorities must adhere to the postulates of good faith. This rule also applies to international relations.

The international principle of "pacta sunt servanda" is not absolute, the norm can yield to other principles without the State that fails to comply with it incurring international responsibility. After exhausting certain procedures, the nullity of the treaty, its termination or suspension can be declared, in such cases the State or the International Organization are not legally bound to comply with the clauses of the same, since these are no longer applicable.

It is justified that the State disregards an international commitment, since there is a state of necessity invoked due to the existence of a serious and imminent danger that threatens to damage an essential interest of the State, which has not been provoked by the State itself, which can be tackled through conduct contrary to what is established in the Treaty and that such conduct does not in turn affect an essential interest of the victim State.

Based on the principle of "pacta sunt servanda", the Colombian authorities are obliged to ensure compliance with the treaties ratified by Colombia. (Art t. 4º CP).

Chapter 3

basics

constitutional provisions on the approval of treaties

3.1. COMPETENCE OF THE PRESIDENT OF THE REPUBLIC

It corresponds to the President of the Republic as Head of State, Head of Government and Supreme Administrative Authority "To direct international relations, appoint diplomatic and consular agents, receive the respective agents and celebrate treaties or agreements with other States and entities of international law that will be submitted for approval by Congress[37].

In all the cases in which formal acts will be carried out with respect to a treaty, such as signing, ratifying, adhering to, formulating or withdrawing a reservation, the Foreign Ministry must be informed, in advance, so that it can advance the process of preparing and signing the corresponding full powers, when appropriate, to express the consent of the State to be bound by a treaty concluded with the Receiving State or adopted within an international organization[38].

In relation with the full powers, the Constitutional Court has pronounced in the sense that[39] "had already admitted the figure of full powers, because although it corresponds to the President to celebrate the treaties, it is obvious that this does not imply that all the essential steps for the celebration of the same 'should be the responsibility of the President of the Republic directly, because, if such an idea takes force, the management of international relations would be considerably hampered and the constitutional purpose of promoting them in the terms currently provided for by the Constitution would become impracticable by the preamble and by articles 226 and 227 of the Charter. Likewise, it is perfectly in accordance with Colombian law that the Convention presumes that they represent Colombia in the negotiation of treaties,

the President, the Minister of Relations and other diplomatic agents of the Executive, such as those indicated in article 7, since the President directs international relations, appoints the ministers of this branch as well as the diplomatic agents, for which it is understood that they act under his instruction".

37 Article 189 of the CP, numeral 2º.

38 Presidential Directive No. 03 of November 15,1994, addressed to the Ministers, Directors and Ambassadors.

39 Judgment C-400 of 1998.

3.2. COMPETENCE OF THE CONGRESS OF THE REPUBLIC

It is up to Congress to make the laws. Through them it performs the function of "Approve or disapprove the treaties that the Government celebrates with other States or with entities of international law. Through these treaties, the State may, on the basis of equity, reciprocity and national convenience, partially transfer certain powers to international organizations, whose purpose is to promote or consolidate economic integration with other States[40]".

3.3. CONTROL OF THE CONSTITUTIONAL COURT

The Constitutional Court is entrusted with the custody of the integrity and supremacy of the Constitution. In this sense, it fulfills the function of "Deciding definitively on the enforceability of international treaties and the laws that approve them. To this end, the Government will send them to the Court, within six days following the enactment of the law. Any citizen may intervene to defend or challenge its constitutionality. If the Court declares them constitutional, the Government may carry out the exchange of notes; otherwise, they will not be ratified. When one or several norms of a multilateral treaty are declared unenforceable by the Constitutional Court, the President of the Republic may only express the consent formulating the corresponding reservation.

The Constitutional Court has stated that "For the treaties or agreements international laws have internal legal force in Colombia, it is an essential condition that their regulations do not contradict or violate the precepts enshrined in our Political Charter, because in the event that such a thing occurs, the transgressive clauses would be inapplicable"[42].

3.4. INTERNATIONAL TREATIES LIKECOMPLEX ACTS

From what has been stated in the previous three numerals, we can say that international treaties are complex acts in its training. The Constitutional Court has ruled in regard to this issue that "As a complex act that it is, the International Treaty is concluded after having been the subject of an equally complex procedure. It can be said of it, just as it has been said in internal law, that it is a formal legal act, this is subject to procedures; that is to say, that it is perfected through the use of a certain procedure regulated by the Constitution and the law of the State, or by use. The traditional procedure for the conclusion of treaties, applied in principle to bilateral treaties, comprises negotiation by the executive, signature by plenipotentiaries, ratification and exchange of ratifications. In modern states of law the approval of the treaty is entrusted to the legislative body; then comes the ratification, which is a sovereign act of the Executive.

In the case of multilateral treaties, the procedure also includes the possibility of accession to the treaty by the States that were not originally signatories of the same. As for ratification or accession, its legal regime is inspired by a fundamental principle:

40 Article 150 of the CP, numeral 16.
41 Article 241 of the CP, numeral 10º.
42 Judgment C-295 of 1993, MP Dr. Carlos GaviriaDiaz.

the competent authority is determined by the internal public law of the State concerned. Contemporary international practice is very clear in this regard, and the multilateral treaties themselves, with slight differences in form, affirm the principle that ratification will be carried out in accordance with the constitutional procedures in force in each of the signatory States.[43]".

Thus, in general it is possible to distinguish three major phases in the formation of a treaty. At the initial moment, the subjects of international law negotiate, adopt and authenticate a certain text. Then in a phase called intermediate by some sectors of the doctrine, the States internally approve the treaty, and thus the final phase is reached, where the subjects internationally express their consent to be bound by the treaty. However, the issue is complex, since the regulation of this matter refers to two regulations: public international law and the constitutional regulations of each State. The constitutional problem is then to what extent the principles and rules of Vienna II on the formation, application and termination of the treaties are compatible with the Colombian constitutional order since the Charter has established a particular procedure, which involves the three branches of power and supposes the fulfillment of certain stages, so that, in a regular and valid manner, Colombia can be bound internationally[44]. Thus, it is up to the President of the Republic, as director of International Relations, to take the initiative in the conclusion of treaties, their negotiation directly or through their delegates, and sign them ad referendum, since they must be submitted for approval by Congress. (CP ar t. 150, numeral 16). For its part, this representative body must approve or disapprove these treaty projects, which then pass to the automatic review, prior and comprehensive review of the Constitutional Court, who must definitively decide on the enforceability of draft treaties and the laws that approve them. If they are constitutional, the Government may internationally grant the consent of the Colombian State, but if one or several norms of a treaty are declared unenforceable by the Constitutional Court, the President of the Republic may only express the consent of the Colombian State by formulating the corresponding reservation. (CP art. t. 241, number 10).

3.5. SUPPLEMENTARY AGREEMENTS

In international treaties, governments agree to develop the same through the execution of Supplementary Agreements.

The consent of the Government to receive is prior and is recorded in the Supplementary Agreement. These agreements are specifically signed by the Ministry of Foreign Affairs, in the field of Colombian international cooperation.

The complementary agreements do not constitute an international treaty, since they are not of a general nature, they do not contain guidelines, intentions or purposes.

The Cooperating Governments, once they approve the non-reimbursable financing that the projects require for their concretion of the celebration of these Complementary Agreements, which are strictly framed within the International Treaties with the corresponding governments, they are derived from the substantive clauses of the respective Treaty or Basic Agreement of Cooperation and are constituted in its development. Its basic function is to record the execution of a project, therefore, it corresponds to an instrument of lower hierarchy.

43 Sentence C-276/93. MP Dr. Vladimiro Naranjo Mesa.

44 On this procedure, see, among others, Judgment C-563 of 1992.

They are also called “project agreements” or “simplified agreements” and they are the fundamental mechanism available to the cooperating and beneficiary governments for the development of the Treaties and the implementation of bilateral cooperation; These do not commit the parties beyond what is established in the corresponding treaty, because they are documents that set the basic conditions for cooperation; in them the practical and operative details of each project can be determined. That is, they instrumentalize cooperation.

These supplemental agreements can be celebrated validly using the procedures that in International Law are called “of a simplified", that is, through the signing of agreements that come into force on the date of their subscription or through a swap or exchange of diplomatic notes.

In terms of cooperation, these Agreements are specific to a project of an eminently technical nature and must basically contain the following:

a) Objective of the project.

b) Determination of the executing entities.

c) Contribution of the donor country.

d) Colombian contribution.

e) Dispute resolution.

f) Duration.

Generally, an integral part of these agreements is the Project Operations Plan, or an attached technical document, which describes the conditions and characteristics of its execution.

In relation to the Complementary Agreements, the Constitutional Court has pronounced in the following sense[45]:

The importance of these agreements is that, by the practice of law Internationally, the conclusion of cooperation treaties and agreements, by their nature, implies the inclusion of general clauses that require, due to their specialty, the conclusion of future agreements that complement the will of the States included in the respective international treaty or agreement.

In this way, the complementary agreements become a mechanism of vital importance for cooperation, since they constitute the instrument or means that the parties must use to put into practical operation the agreed measures of cooperation.

Specifically, cooperation and assistance between the States is carried out through the implementation of cooperation projects and programs that are the subject of specific regulations for each specific case, which is incorporated into a written instrument between the governments involved, which are called “supplementary agreements”.

These complementary or treaty development agreements are instruments that seek to comply with the clauses of a current treaty and that do not

45 Judgment C-363/2000. MP. Dr. Álvaro Tafur Galvis. Bogota, DC, March 29, 2000.

origin to new obligations nor can they exceed those already contracted by the Colombian State.

In this sense, the conclusion of complementary agreements are appropriate whenever

a) They do not contain new obligations other than those agreed in the Treaty or Agreement concluded.

b) Are framed within the purposes and objectives of the Agreement, which aims to "develop all technical and scientific relations between the two countries", based on respect for the principles of equality of mutual advantages as stated in the Preamble; and

c) The agreement is not modified, nor do these Agreements refer to aspects other than technical and scientific cooperation between the two States.

In relation to the cooperation agreements that include for its development, the celebration of complementary agreements, the Constitutional Court has declared itself in the sense of its constitutionality but conditioned to the extent that the previous assumptions are met[46]".

In complementary agreements, the parliamentary approval process can be dispensed and put into effect by the President of the Republic, in exercise of the competence that he possesses for the direction of international relations. The Constitutional Court has stated that "agreements between governments" should not be subject to the procedures and requirements contemplated in the Political Constitution specifically for the signing and approval of international treaties. The foregoing because, it is insisted, these agreements are the necessary instruments so that the Head of State -or his ministers-, in the exercise of the powers that derive from his capacity as supreme director of international relations to the Colombian legal system[47].

Through the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION and with the help of the Foreign Ministry, public entities can obtain the conclusion of agreements or complementary agreements (celebrated between the parties State-State or State- International Organization) and extend to the cooperation projects that are going to execute the conditions foreseen in the Treaties or Framework agreements.

SOCIAL ACTION, as a public establishment, does not have the legal capacity to represent the Republic of Colombia, therefore the commitments it acquires through the signing of agreements are assumed directly within the orbit of its own competence and not on behalf of the Republic of Colombia. Therefore, it signs non-reimbursable cooperation agreements, for example with the World Bank, the Inter-American Development Bank, in its capacity as coordinating entity and promoter of international cooperation in the country, but not on behalf of the Republic of Colombia.

46 Constitutional Court, SentenceC-303 of 2001, MP: Marco Gerardo Monroy Cabra.

47 File D-798. Lawsuit of unconstitutionality against article 538 (partial) of Decree 2700 of 1991. MP. Dr. Vladimiro Naranjo Mesa, April 20, 1995.

3.6. CELEBRATION OF INTER-ADMINISTRATIVE AGREEMENTS

The agreements, conventions or contracts entered into by the public entities of the countries among themselves are of an inter-administrative or inter-institutional nature and therefore only bind the entities that have signed them within the framework of the powers that the law or regulation of the country of origin has conferred upon them; the commitments thus established are assumed directly by the entities that sign them and not by the corresponding States. They do not bind the Colombian State or the Colombian Government as such and therefore the other entities of the Administration that comprise it and are related to the thematic area of the signed Agreements, an effect that is achieved if the subscription of the agreements is processed through the Foreign Ministry or full powers are obtained for the effect.

These inter-administrative or inter-institutional agreements cannot produce the legal effects of the Complementary Agreements, that is, the legal effects derived from the Agreements or Framework Agreements concluded between the States. The exemptions, privileges, immunities and prerogatives provided for in the Treaties or Framework Agreements do not apply to these, unless in the Agreement or Framework Agreement with the respective cooperant, it has expressly extended such prerogatives to administrative or inter-institutional agreements; for example, when the Framework Agreement authorizes that the programs or projects may be agreed upon by the administrative entities responsible for the sector or subject matter of the cooperation.

Chapter 4

Legislation

internal

4.1. GENERAL CONTRACTING REGIME

Public entities have a regulated contracting system, that is, in the celebration and execution of contracts, they must observe the principles, procedures and norms that the law has contemplated. In Colombia, this law is Law 80 of 1993, called the "General Statute of Public Administration Hiring"[48], today modified by Law 1150 of 2007.

4.2. ABILITY

The state entities have the capacity to hire and commit the legal person of which they are a part and order the expenditure in development of the appropriations incorporated in their budget, which constitutes their budgetary autonomy. Therefore, they have broad legal capacity to acquire rights and contract obligations, through the head of the respective body or his legal representative, contracting capacity that may be delegated to executives at the management level or whoever acts on their behalf[49].

4.3. CONTRACTING PURPOSES

Public servants must take into consideration that when entering into contracts and in the execution of the same, the entity seeks the fulfillment of state purposes, the continuous and efficient provision of public services and the effectiveness of the rights and interests of the companies that collaborate with them in the achievement of said purposes[50].

The State purposes whose realization the authorities intend when entering into the contracts are to serve the community, promote general prosperity and guarantee the prosperity of the principles, rights and duties enshrined in the Constitution; facilitate the participation of all in decisions that affect them and in economic, political, administrative and cultural life

48 For the purposes of applying this law, SOCIAL ACTION, in its capacity as a national decentralized entity, with the legal nature of a public establishment, is among the state entities listed in subparagraph a) of Article 2 of Law 80 of 1993.

49 Article 110 of Decree 111 of 1996.

50 Article 3 Law 80 of 1993.

of the Nation; defend national independence, maintain territorial integrity and ensure peaceful coexistence and the validity of a just order[51].

4.4. PRINCIPLES OF STATE CONTRACTS

In accordance with the foregoing, state entities, in order to execute their operating and investment budgets, must comply with the principles and procedures established by the Contractual Statute.

The principles that govern state contracting are those of transparency, economy, and responsibility. There is also an important duty of objective selection.

The previous pillars of state contracting are developed in the Articles 24, 25, 26 and 29 of Law 80 of 1993.

We must understand that Law 80 of 1993 is above all a law that by its very nature is of a general character and, therefore, it cannot be claimed that it has foreseen all the factual situations related to state contracting. It is also a law of principles. The foregoing, to conclude that in the event of a legal vacuum or uncertainty about the way to act in any event, the state entity must resort to such principles and channel its actions in such that with their performance they are fully realized.

4.5. REGULATIONS APPLICABLE TO STATE CONTRACTS

4.5.1. TYPICITY OR ATYPICITY OF THE CONTRACTS. AUTONOMY OF THE WILL

So that the Administration can celebrate contracts, it is not necessary that the type of contract to be celebrated is expressly recognized in the law. It is what in contract law is called typical and atypical contracts. Typical, those that are expressly contemplated and regulated by law (by way of example, within the typical contracts we find the contract of sale, donation, lease, work, consultancy, provision of services).

But the negotiation modalities to which the parties must resort to satisfy their needs and meet their objectives, on multiple occasions, are not provided for in the law and therefore lack regulation.

Due to the above, The Colombian positive system allows, in exercise of the principle of the autonomy of the will, to celebrate all kinds of pacts, agreements or contracts, as long as they are not contrary to the law, morality or good customs.

It is in this sense that Law 80 of 1993 provides that "State contracts are all legal acts that generate obligations that are entered into by the entities referred to in this statute, provided for in private law or in special provisions.

or derived from the exercise of the autonomy of the will..."[52]. Entities may hold

51 Article 2 of the ConstitutionColombian politics.

contracts and agreements that allow the autonomy of the will and require the fulfillment of state purposes[53].

4.5.2. APPLICABLE STANDARDS

The legal concept of contract and the different types of contracts that we know are not specific to public or administrative law, but have their normative origin in private law, which is the fundamental basis for the construction of the theory of Administration contracts, which is why, to the structuring of each class of contracts, it is necessary to go first of all to the principles existing in the provisions of the civil and commercial law.

This is why the contracts entered into by state entities are governed by the pertinent commercial and civil provisions, except in matters particularly regulated in Law 80 of 1993[54].

The law is mandatory for both nationals and foreigners, whether they are residents, domiciled or transients in Colombia, except for the rights granted by public treaties.

Regarding contracts entered into in a country other than the one to be fulfilled, Law 80 of 1993 establishes that they will be governed by the law of the country where they must be fulfilled[56].

Regarding the law applicable to contracts financed with funds from multilateral credit organizations or entered into with international public law persons, assistance, aid or international cooperation, we will deal with it in a separate section, which regulated subparagraph 4 of article 13 of the Law 80 of 1993, today article 20 of Law 1150 of 2007, regulated by 85 of Decree 2474 of 2008.

4.5.3. CLAUSES OF THE CONTRACTS

The stipulations or clauses of the contracts will be those that, in accordance with the civil, commercial regulations and those provided for in Law 80 of 1993, correspond to their essence and nature.

In the contracts entered into by state entities, the modalities, conditions and, in general, the clauses or stipulations that the parties consider necessary and convenient may be included, provided that they are not contrary to the Constitution, the law, public order and the principles and purposes of the contracting statute and those of good administration[57].

in state contracts the payment of advances and advance payments may be agreed, which in no case may exceed 50% of the amount of the contract, adding these two amounts[58].

4.5.4. FORMALITIES

State contracts must be in writing and will not need to be elevated to a public deed, with the exception of those that imply mutation of the domain or imposition of encumbrances and easements on assets

52 Paragraph 1, Article 32 of Law 80 of 1993.

53 Paragraph 2, Article 40, ibid.

54 Paragraph 1, Article 13, ibid.

55 Articles 18 of the Civil Code and 57 of the Political and Municipal Regime Code.

56 Contracts entered into abroad may be governed in their execution by the rules of the country where they were signed, unless they must be fulfilled in Colombia. If they are held in Colombia and must be executed or fulfilled abroad, they may be subject to foreign law. Paragraphs 2 and 3 ibid. Conc. Article 32 of Law 33 of 1992 approving the International Civil Law Treaty.

57 Paragraphs 1 and 3 of Article 13 of Law 80 of 1993.

58 Paragraph of Article 40 of Law 80 of 1993. Legal Concepts of the Comptroller General of the Republic, Legal Office 0938 of April 18, 2000 and 2222 of August 13, 1999.

property and, in general, those that, in accordance with current legal regulations, must comply with this formality.

Public entities shall establish the measures required for the preservation, immutability and security of the originals of state contracts[59].

4.5.5. IMPROVEMENT AND EXECUTION OF CONTRACTS

State contracts are perfected when an agreement is reached on the object and the consideration, this is raised to writing and the budget record has been obtained. For the execution the approval of the single compliance guarantee[60] is required. In addition, as a general rule, they require the payment by the contractor of the taxes that are caused with the execution of the contract and the publication in the Single Contracting Journal[61].

4.5.6. INTERPRETATION OF CONTRACTUAL RULES

For the interpretation of the rules or clauses of the contracts, the purposes and principles of Law 80 of 1993, the mandates of good faith, the principle of equality and the balance between benefits and rights that characterize to commutative contracts[62] must be considered.

59 Article 39 of Law 80 of 1993.

60 Article 41 of Law 80 of 1993, in accordance with 71 of Decree 111 of 1996, which reads: "All administrative acts that affect budget appropriations must have prior availability certificates that guarantee the existence of sufficient appropriation to meet these bills. Likewise, these commitments must have a budget record so that the resources financed with it are not diverted to any other purpose. This record must clearly indicate the value and term of the services to which there is a place. This operation is a requirement for the improvement of these administrative acts".

61 Tax Statute (Decree 624 of 1989) and Anticorruption Statute (Law 190 of 1995).

62 Article 28, Law 80 of 1993.

Chapter 5

The cooperation

international and donation contract

5.1. NATIONAL REGULATION ON THE DONATION CONTRACT

Non-reimbursable international cooperation has very special characteristics, it is an atypical conventional or contractual figure, that is not defined or regulated in law.

To find the applicable regulation, conventional or contractual figures typical or regulated by law are used for this type of expression of will, that is, it is investigated how the legislator has dealt with regulating similar cases.

It is, in this sense, that when international cooperation is granted through the delivery of resources in money or in kind and this is non-reimbursable, its regulation in domestic law must be found in the donation contract.

We can say that in any convention or agreement of International Cooperation of that nature, there is an implicit donation, an act of generosity and one of acceptance in relation to the execution of an activity, project or program of common interest.

For this reason, in this chapter we will deal with studying the constitutional and legal regulation that we find in domestic law on the contract of donation.

5.2. CONSTITUTIONAL GUARANTEE ABOUT DONATIONS

The Political Constitution of Colombia establishes the obligation to respect the will of the donor. In accordance with article 62, these donations for purposes of social interest may not be varied or modified by the legislator, unless the object of the donation disappears. In this case, the law will assign the respective assets to a similar purpose. The government will supervise the management and investment of such donations.

This higher level rule gives the donor sources assurance that the goods and resources they deliver to the Republic of Colombia will be used for obtaining the objectives indicated by them. It implies, therefore, that neither

legal provision or by administrative means may be used for different purposes, in respect to the will of the donor.

5.3. LEGAL REGULATION

The donation[63] inter vivos is an act by which a person transfers, gratuitously and irrevocably, a part of his assets to another person who accepts them.

In other terms, i t is a contract in which one of the parties is obliged to give one thing free of charge to the other, without the other being obliged to pay any consideration.

Donations that are delivered as cooperation have the character of manners, to the extent that the goods are delivered to apply them to a special purpose[64].

The foregoing implies that the donee must allocate the assets to the intended purpose and that if the he does not do so, the donor can demand that the donee be obliged to comply or that the donation de revoked.

For this reason, it is said that the obligation generated by the donation contract is modal, in terms of article 1147 of the Civil Code "if something is assigned to someone so that they have it as their own, with the obligation to apply it to a special purpose, such as doing certain works or subjecting oneself to certain loads, this application is a mode and not a suspensive condition. The mode therefore does not suspend acquisition of the assigned thing".

It is important to emphasize that generally the obligations of the donee are of means and not of result. In other words, the donee undertakes to allocate the resources and deploy all his activity with the purpose of achieving certain goals or objectives. It is not directly committed to obtaining the purpose or result itself considered.

In relation to International Cooperation, these donations have their origin in official development aid or private international cooperation and are intended to collaborate with a country for purposes such as assisting victims, contributing to improving the standard of living of the least favored, the protection of the environment and in general as support for programs of the national government, with specific destination to the execution of projects, whose beneficiaries are generally community groups and/or public entities. For the purposes of our study, we are interested in those in which public entities intervene.

"Because the donation inter-vivos is not an 'act' but a true contract, as such, presents in general terms the characteristics of being gratuitous (CC art t. 1497), main (CC art t. 1499), nominated, irrevocable (CC, art t. 1443), solemn when it falls on real estate (CC ar ts. 1457 and 1458), unilateral in that only obligations arise for the donor (CC ar t. 1443), correlative enrichment and impoverishment for the parties (CC ar t. 1455) and it is an exception, because the donation inter-vivos is not presumed (CC art t. 1456)"[66].

The nature of the contract that registers the donation inter-vivos implies the agreement of wills, that is, the offer of gratuity made by the donor and the acceptance made by the done to the offer. If this adjustment of wills does not exist, the gratuitous contract that has been talked about is not configured, because as the doctrine of the

63 Civil Code, article 1443.
64 Civil Code, articles 1473 and 1147.
65 Article 1483 ibid.
66 CSJ. Cas. Civil,Judgment of June 16, 1975.

Court, this kind of convention "requires the concurrence of the wills of the donor and donee, because without the acceptance of the donee, the sole liberal will of the donor constitutes only an offer and not a gratuity agreement"[67].

In relation to donations and their management by public entities, the H. Council of State has had the opportunity to express itself in the following sense[68]:

> 5. **Donations in money or in kind on behalf of the State.** As stated, the Nation can receive donations in its name, or aid for the community, from national or foreign origin, which usually have various purposes, such as collaborating in the care of victims of public calamities, contributing to raising the level of the popular classes, linked to the repression of crimes against humanity or the preservation of public order, etc.
>
> These donations and aid, as manifested in the consultation, usually have the character of manners and are made in money or in kind.
>
> When the donations are in money and as such are delivered to the State, they enter its assets and are therefore considered occasional income that must form part of the public budget. Also, they may have specific destination when they refer to social investment.
>
> If the donations to the Nation are in kind ("bicycles, sewing machines, etc.") and are delivered to the Government so that it can be subsequently distribute to the community, it is not appropriate that they be integrated into the national budget; in this case, the entry record to the inventories of the entity that receives them. And the distribution to the community must be done in accordance with the stipulations of the respective agreement, or under the conditions expressed by the donor in the delivery certificate and, in the latter case, if they lack modal norm, in accordance with the plans and programs of development or, failing that, according to the constitutional criteria in matters of social investment.
>
> In such a way that, as the goods are delivered, they must be unloaded from the inventory, supporting the records with minutes signed by those who deliver and by those who receive.
>
> 6. **Aid in money or in kind for the community.** When aid in money or in kind is made for the direct benefit of the community, clearly determining to which group of people it should be delivered, but for security reasons or by the donor's will it is carried out through the State, the action of the public entity is merely that of intermediary. So what is intended is to organize the distribution through an official channel and in accordance with the will of the natural or legal person who makes the contribution. In this event, it is reiterated that the Nation could not include these goods in its budget because they do not constitute its occasional income; they simply have to be distributed among the people determined by the donor.
>
> In the event that the collaborator has not expressly expressed his will regarding the form of distribution of the goods, the operating entity must proceed in accordance with

67 CSJ, Cas. Civil, Judgment of October 30, 1978.

68 Consultation on donations in favor of the Nation and aid to the community, filing No. 531, Council of State, Consultation Room and Civil Service,Director Speaker Javier Henao Hidrón. August 31, 1993.

the provisions of national development plans and programs and, in the absence of these, based on the constitutional criteria on resource allocation established in articles 356 and 357 of the Constitution.

In such conditions, the state entity that receives the assets must make a detailed inventory of them and then proceed to deliver them to the beneficiaries indicated by the donor and, to the extent that the delivery occurs, unload them when preparing and signing the respective minutes.

The resources received by the Nation in order to acquire certain goods, which will be delivered to needy members of the community, can be placed in trust, in accordance with the legal regulations that regulate this type of contract, provided that there is the express authorization of the donor and without the need to incorporate them into the national budget, since such resources do not constitute occasional income for the Nation.

Chapter 6

Hiring

derivative

NATIONAL REGULATION ON CONTRACTING WITH INTERNATIONAL COOPERATION RESOURCES AND INTERNATIONAL COOPERATION, ASSISTANCE OR AID ORGANIZATIONS

6.1. CONCEPT

Public entities, in addition to entering into Donation Agreements, in turn enter into so-called “derivative” contracts or agreements or those that develop and execute the will of the source or the provisions of the Donation Agreements or of Cooperation.

In particular, the administration or execution of cooperation resources is specified in the conclusion of derivative contracts or agreements.

They are celebrated with natural persons or legal entities of public or private law, who undertake to fulfill certain obligations, such as executing projects, carrying out activities within their framework, providing services or delivering goods, for which SOCIAL ACTION or the public entity executing the cooperation, delivers the resources to the source.

One of the most frequent demands of the sources is to apply their regulations, procedures and contracting rules in the execution of the non-reimbursable cooperation resources that they deliver.

On this subject we must begin with a reflection of principle. Public entities must have absolute certainty, in relation to the need to fully comply with international commitments, whether those contained in the Agreements or Cooperation Framework Agreements that with each country or cooperating exists, or in the complementary agreements or in a simplified form, or in the so-called cooperation or donation agreements that they celebrate.

The conventions or agreements are signed under the premise of the good faith of those who they celebrate and therefore the Parties reciprocally expect a correct intention and conduct aimed at the full and timely fulfillment of the provisions of the same.

Honoring that will of disposition and trust requires a burden for public entities, carefully studying the clauses of the cooperation agreements,

expand its content, if necessary, examine and seek the meaning and scope of the clause proposed by the cooperator, in short, have full knowledge of the responsibilities that with the conclusion of the agreement acquires not only in relation to the cooperator, but also and mainly with the final beneficiaries of the resources, goods and services of the cooperation that they are going to channel or execute.

As we stated, one of the commitments that with some frequency contracted by the state entities is the application of the regulations, procedures and contracting standards of the cooperant. This event was regulated in Colombia in subsection 4 of article 13 of Law 80 of 1993, which, although repealed by Law 1150 of 2007, considering it of special interest for the understanding of the subject of International Cooperation, will be the object of analysis in this chapter[69]. Today, regulated in article 20 of Law 1150 of 2007 and 85 of Decree 2474 of 2008.

6.2. CONTRACTING RULES APPLICABLE IN THE IMPLEMENTATION OF INTERNATIONAL COOPERATION RESOURCES

In this section we will deal with enunciating the legal reasons that support the application by public entities of the rules or regulations for contracting cooperants, in the celebration and execution of derivative contracts, financed with resources from international cooperation.

However, the repeal of subsection 4 of article 13 of Law 80 of 1993, in this section, we mention it, together with other decrees and jurisprudence for considering them as background Legal matters of special relevance for the understanding and interpretation of the regulations related to International Cooperation.

1. Basis for compliance with international commitments

Article 9 of our Political Constitution establishes:

"The foreign relations of the State are based on national sovereignty, on respect for the self-determination of peoples and on the recognition of the principles of international law accepted by Colombia".(Bold is ours).

The principles of international law have been accepted by Colombia and are contained in the Vienna Convention on International Law of the Treaties, signed on May 23, 1969 and approved by the Law 32 of 1985, and are also contemplated in the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, also known as Vienna II, signed on March 21, 1986 and approved through Law 406 of 1997.

Within these principles, we find the essential part of International Law of "pacta sunt servanda", according to which every treaty that enters into force binds the parties and must be fulfilled by them in good faith. This principle constitutes the essential basis of the Law of Treaties and, in general, of the harmonious and peaceful functioning of the international community. Of the same

69 In the previous edition of this legal publication on international cooperation of July 2002, the interpretation of the ACCI Legal Advice on this rule was presented, based on the literal tenor of the same, to the extent that the text is clear and offers no confusion or ambiguity. However, the meaning and scope of this norm, given the authority of the pronouncements of the H. Constitutional Court, must be what that Corporation determined in Judgment C-294 of 2004, through which the constitutionality review of the article 13, which is studied in this chapter.

follows the obligation to comply in good faith with the rules and international obligations, by the subjects to which they are opposable. “Pacta sunt servanda” not only means that the treaties must be formally accepted, but that they must be fulfilled in good faith, that is, with the will to make them effective. In Colombia, the principle of complying in good faith with its international obligations has evident constitutional support in article 83 of the Political Constitution, since the Charter states that the actions of the Colombian authorities must adhere to the postulates of good faith. This rule also applies to international relations.

In addition, and since it should be the criteria of public entities in general to faithfully comply with the international commitments acquired, it is important to state that Article 27 of the 1969 Convention affirms, unequivocally, that a State cannot invoke the precepts of its domestic law as justification for non-compliance with a treaty.

2. Legal nature of Law 80 of 1993[70]

The final paragraph of article 150 of the Political Constitution of Colombia establishes:

"It is up to Congress to issue the general contracting statute of the Public Administration and especially of the national administration."

Based on the previous constitutional authorization, Congress approved Law 80 of 1993, which contains the regulations related to the General Contracting Statute of the Public Administration, which, as its name indicates, is a "general" statute, applicable to all entities that the same law classifies as state entities.

As a statute of a “general” nature, it was basically structured as a law of principles, which are later stated and developed with a certain degree of detail.

Being a law of a general nature and of principles, it is a statute that seeks the realization of some ends that it seeks to achieve through the establishment of those principles.

These are value standards that seek to protect the treasury, transparency and objective selection of contractors, economy, effectiveness and efficiency instate activity.

3. The provisions contained in the International Cooperation Agreements or Agreements are of a special nature and their execution by the executive is of constitutional origin.

Law 80 of 1993 aims to provide the rules and principles that govern the contracts of state entities. As stated, it is a law that establishes principles that it seeks to achieve and is of a general nature.

For their part, the cooperation agreements establish the principles, rules and procedures to be followed for the execution of contracts through which the resources of the International cooperation will be executed.

70 Law 80 of 1993was modified by Law 1150 of 2007, through which measures for efficiency and transparency are introduced in Law 80 and other general provisions on contracting with public resources are dictated.

These are provisions of specific and particular content for the execution of these resources and that have the hierarchy of an international commitment.

Additionally, these are special provisions that express the will of the donor, which is protected in article 62 of our Political Constitution.

Being Law 80 of 1993 a general rule and the provisions and procedures contained in the cooperation agreements of a special nature, and in relation to the contracting issue that the two legal systems regulate, it is pertinent to conclude that the special rule prevails in its application over the general one and therefore it must be followed in terms of this subject to the provisions of the latter.

The application of the special rule as opposed to the general rule on state contracting is regulated for public establishments in article 81 of Law 489 of 1998, a statutory law, compared to the ordinary nature of Law 80 of 1993, rule that establishes:

"Article 81. Regime *of the acts and contracts. The unilateral acts issued by public establishments in the exercise of administrative functions are administrative acts and are subject to the provisions of the Contentious-Administrative Code.*

The contracts entered into by public establishments are governed by the rules of the Contractual Statute of state entities contained in Law 80 of 1993 and the provisions that complement it, add or modify, without prejudice to the provisions of the special rules". The foregoing, in accordance with the provisions of Article 5 of Law 57 of 1887 and Article 2 of Law 153 of the same year.

In relation to the special nature of the rules and regulations for hiring cooperants, the Attorney General's Office has had the opportunity to express its opinion, in the sense that "From the fourth paragraph of article 13 of Law 80 From 1993 a special contracting regime is derived, which allows the non-application of its regulations. Likewise, it is necessary to clarify that the meaning of the norm, referring to the application of regulations of the afore mentioned entities in the processes of formation and award of the contract, refers only to those that are subscribed with resources coming from multilateral organizations, people governed by public law and organizations of cooperation, assistance or international aid, that is, that the norm does not mention the contracts celebrated with the entities and with resource emanated from the corresponding State entity.

The exclusion of the fourth paragraph is constitutional, insofar as what is pursued by it, is that contracts financed with resources from abroad, either as a loan or donation, are not subject to the internal legal order, due to the nature of said entities and to the barriers and obstacles that may arise to obtain these resources, that is to say, that in practice it will be difficult to access these funds if the public entities that unilaterally want to impose the application of the contractual statute.

For example, in the loan contracts signed with the IDB or the IMF, if they were required to comply with the national standard,

since these would have no choice but to deny loans to state entities, given that the application of their internal regulations is hardly obvious, which have not been issued at the whim of the leaders of these organizations, but correspond to policies adopted within the framework of international law, in compliance with agreements, treaties and resolutions of supranational entities in which the country has actively participated, such as the UN and the OAS, with their affiliates. In these events, requesting the application of internal law in terms of contracting is practically isolating oneself from the international agreement on the credit issue, in addition to not only implying the aspect of being able to obtain goods and services, but also the development of macroeconomic that is intended to be achieved when resorting to this type of credit.

Note that in the case of donations, the challenged rule is adjusted to article 62 above, when it provides that the destination of donations for purposes of social interest cannot be varied unless the object of themselves disappear. Therefore, it is not reasonable to ignore the will of the donors, which can be reflected in the decision that the receiving entity accepts its regulations, through which it can intervene in the formation, award and execution of contracts financed with its resources.

On the other hand, with respect to contracts entered into with foreign persons governed by public law, the rule cannot be examined in isolation. Within them, there are international agreements or agreements signed by Colombia with such persons, where it is necessary to apply rules different from the national ones in order to satisfy collective needs"[71].

4. Law 80 of 1993 is a law of principles, principles that also develop the contracting rules and procedures established in the cooperation agreements

The contracting rules and procedures foreseen for both in Law 80 of 1993 as in the international cooperation agreements and in the regulations of the cooperators are instrumental or means to achieve the objectives that the official cooperation is intended.

Said rules and procedures become a medium and not in itself and end considered; are based on principles that the they both seek to perform.

Law 80 of 1993 establishes regulations that seek to carry out the following principles: transparency, economy, objective selection and responsibility.

In turn, in the regulations of the cooperators we find norms and procedures that develop these principles. In this sense, the principles and regulations that develop them are considered: the principle of fair competition, transparency, proportionality, equal treatment and non-discrimination; duty to select the best offer in accordance with the selection and award criteria of the tender; non-retroactive nature of awards; Obtaining services, supplies and works of the desired quality in the best conditions of

71 Intervention in the unconstitutionality claim process, subsection 4, article 13 of the Law 80. Judgment C-294 of 2004.

price; also, grounds for exclusion from the participation of contracts (disabilities and incompatibilities).

On this subject, the General Audit Office of the Nation, in its interesting intervention within the constitutionality process of paragraph 4 of article 13 of Law 80 of 1993[72], stated that "The expression 'may submit to the regulations of such entities' has constitutional support, given that at the international level one of the most frequent demands of international public law persons who grant loans or make donations in money or in kind is that their procedures and rules be applied in the execution of those resources, being understandable that whoever makes the disbursement is interested in granting at least that guarantee that represents the commitment to execute the recognized amounts observing principles of transparency, economy and efficiency. For reasons of national convenience, the measure is justified, provided that it does not contradict the higher order. The General Audit Office of the Republic has had the opportunity to review the text of various contracting regulations adopted by international cooperation, assistance and aid organizations, and it has been verified that the procedures adopted by these people have great similarities with the regime of Colombian hiring. In this regard, the principle of reciprocity and the execution of many contracts by Colombian nationals stand out, ruling out at the same time the alleged affectation of job opportunities."

5. Mandatory nature of the rules and procedures established in the regulations for contracting cooperants

In any case, if the application of the contracting rules and procedures provided for in the cooperation agreements is chosen, that, and in its entirety, will be the law to which the parties will apply for the execution of the Program, with all its consequences, including the terms, competencies, authorizations, admissibility requirements, publicity, choice of contractors, contracting and execution; standard and procedures based on which, additionally, it will be necessary to respond to the requirements and reports required by the control authorities, such as those of a fiscal nature, competence of the Comptroller General of the Republic or of the competence of the organs in the disciplinary or penal scope.

These are not substitute or secondary regulations compared to the provisional, global or annual operational plans of the projects. They are rules and procedures that must be followed for the execution of said plans.

From the foregoing, the importance arises for the executing entities of the cooperation resources to have in its entirety the text of the rules and procedures to be applied; likewise, obtain the proper and timely training from the sources and constantly consult them on their proper application.

It is not surplus to add, that in accordance with what is established in the numeral1 of article 34 of Law 734 of 2002, within the duties of all public servants is that of "*Compliance and ensure that the duties contained in the Constitution and international humanitarian law treaties are fulfilled, the*

72 Judgment C-294 of 2004.

others ratified by Congress, laws, decrees, ordinances, district and municipal agreements, the entity's statutes, regulations and function manuals, judicial and disciplinary decisions, collective agreements, employment contracts and superior orders issued by a competent official" (bold is ours).

6. Compliance with the principles that govern the administrative function

The foregoing does not exonerate the public entity in charge of executing the cooperation resources from the duty to comply with the principles that govern the administrative function, contained in article 209 of the Political Constitution and those contemplated in Law 489 of 1998, within which we find those related to good faith, equality, morality, speed, economy, impartiality, effectiveness, efficiency, participation, publicity, responsibility and transparency, because the conclusion of any contract implies the public interest that is the object of protection.

In particular, it is emphasized in the liability, which is regulated for contractual purposes in Law 80 of 1993, as follows:

"From the principle of responsibility

ARTICLE 26. Of the principle of responsibility. Under this principle:

1st. Public servants are obliged to seek compliance with the purposes of the contract, to monitor the correct execution of the contracted object and to protect the rights of the entity, the contractor and the third parties that may be affected by the execution of the contract.

2nd. Public servants will be liable for their unlawful actions and omissions and must indemnify the damages caused by them.

3rd. Entities and public servants will respond when they have opened tenders or contests without having previously prepared the corresponding specifications, terms of reference, designs, studies, plans and evaluations that may be necessary, or when the specifications or terms of reference have been prepared in an incomplete, ambiguous or confusing manner that lead to subjective interpretations or decisions by them.

4th. The actions of public servants will be governed by the rules on the administration of the property of others and by the mandates and postulates that govern conduct adjusted to ethics and justice.

5th. Responsibility for the direction and management of contractual activity and that of the selection processes will be the head or representative of the state entity who will not be able to transfer it to boards of directors of the entity, nor to the popularly elected corporations, to the advisory committees, nor to the control and surveillance organisms of the same.

[...]

8th. The contractors will respond and the entity will ensure the good quality of contracted object.

7. Subsection 4 of article 13 of Law 80 of 1993

The fourth paragraph of Article 13 of Law 80, today repealed by Article 32 of Law 1150 of 2007, provided:

"Contracts financed with funds from multilateral organizations of credit or held with foreign persons of public law or international cooperation, assistance or aid organizations, may be subject to the regulations of such entities in everything related to formation and award procedures and special clauses of execution, compliance, payment and adjustments".

8. Sentence C-249 of March 16, 2004 of the Constitutional Court

The Plenary Hall of the Constitutional Court, in Judgment C-249/04 of 16 March 2004, by deciding the claim of unconstitutionality against subparagraph 4 of article 13 of Law 80 of 1993, determined the scope of application of the same and clearly established the meaning and interpretation that should be taken of said rule:

"As can be well inferred, from the point of view of the resources linked to state contracting, this subsection refers exclusively to the income received by the Public Treasury from international entities or organizations. For this reason, this subsection is entirely inapplicable in relation to those contracts related to resources of the general budget of the Nation or of the territorial budgets, when such resources do not correspond to donations or loans. Thus, for example, this subsection is inapplicable in relation to contracts for the administration of state resources that the competent authorities have not legally assessed as a donation or loan. Therefore, when the rule says that the respective contracts, "(...) may be subject to the regulations of such entities in everything related to formation and execution procedures and special clauses of execution, compliance, payment and adjustments". Such discretion can only be assumed, and therefore validly exercised, within the precise limits of the contracts related to resources received from international entities or organizations, which usually occurs as a loan or donation. For this reason, any interpretation to the contrary of the subparagraph in question could only lead to a budget execution that is alien to the realization of the purposes of the State.

However, as the Fiscal Hearing correctly expresses, the fourth paragraph of the challenged article entails a special contracting precept, which by virtue of the same Law 80 of 1993 allows the inapplicability of the Public Contracting Statute in the event of contracts related to funds received from multilateral credit organizations or entered into with foreign persons of public law or international cooperation, assistance or aid organization. Which finds justification in the fact that Colombia is part of those international organizations, such as the IMF or the IDB, and by being part of them can accept their statutes and contracting regime in compliance with agreements, treaties and resolutions of supranational entities in which the country has actively participated, such as the UN and the OAS, with its affiliates.

On the other hand -continues the Fiscal View-, Note that in the case of donations, the challenged rule is adjusted to article 62 above, when it provides that the destination of donations for purposes of social interest cannot be changed unless the object of the same disappears. Therefore, it is not reasonable to disregard the will of the donors, which can be reflected in the decision that the receiving entity accepts its regulations, through which it can intervene in the formation, award and execution of contracts financed with its resources.

Therefore, according to the interpretation assumed by this Corporation, the fourth paragraph of the accused article is constitutional."

9. Decree 2166 of 2004[73]

As a consequence of Judgment C-294 of 2004, the National Government issued Decree 2166 on July 7, 2004:

"Article 1. Article 1 of the 1896 decree of 2004 will look like this:

Contracts or agreements financed with resources from loans and donations entered into with multilateral credit organizations, foreign persons governed by public law or international cooperation, assistance or aid organizations, they may be subject to the regulations of such entities in everything related to formation procedures, adjudication and clauses, special execution, compliance, payment and adjustments.

The same treatment will be given to counterpart resources linked to these operations.

Article 2. The contracts or agreements entered into with international cooperation, assistance or aid organizations supported by international cooperation instruments of which the Nation is a part, for the fulfillment of cooperation and technical assistance objectives, may be subject to the regulations of such organizations in all matters related to formation procedures, adjudication and special clauses of execution, compliance, payment and adjustments.

The foregoing is without prejudice to contracts with foreign persons governed by public law that will be entered into and executed as agreed between the parties.

Paragraph. Contracts or agreements for cooperation and international technical assistance shall not be understood as those whose purpose is the administration of resources".

10. Execution of national counterpart resources

In relation to the applicable contracting rule for the execution of resources of national counterpart, must refer in first place, to the provisions of article 2 of Law 80 of 1993, which defines for effects of that law, which it considers state entities,
within which are the public establishments of the national order. Also, as established in article 20 of the

73 Today repealed by Decree 66 of 2008.

Law 1150 of 2007 and what is regulated in Decree 2474 of 2008, of which can be deduced:

1. Subsection 1 of article 20 of Law 1150 of 2007 regulates contracting with international organizations, in the following sense:

   "On contracting with international organizations. Contracts or agreements financed in their entirety or in amounts equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment".(Bold is ours).

2. Subsection 1 of article 85 of Decree 2474 of 2008 establishes

   "Regime applicable to international cooperation contracts or agreements. Contracts or agreements financed in their entirety or in amounts equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, the contracts or agreements entered into with public resources of national origin will be subject to the procedures established in the General Public Contracting Statute.*".*

3. In this way, if it is regarding public resources of national origin (which includes those that come from the national budget or from the territorial entities), for its execution by an organization of cooperation, assistance or international aid, it must be in accordance with the provisions of subparagraphs 1 of the standards mentioned, and depending on the percentage of national and international participation, the regulations of such entities or the procedures established in the General Statute of Public Procurement will be applied.

4. In the case of national counterpart resources executed by public entities, the rules to be applied in the contractual processes will be those established in the General Contracting Statute of the Public Administration, Law 80 of 1993. The application of the foreign regulation can only be exercised validly, in relation to contracts related to resources received from international entities or organizations, that is, in relation to loan, donation, technical assistance or cooperation contracts entered into by the respective state entities with international entities or organizations, in accordance with the provisions in Judgment C-249 of 2004 of the H. Constitutional Court.

5. When a contract is co-financed with resources from a donor and with national counterpart resources, the proportion of said co-financing must be determined, and in this way the applicable contracting rule must be established.

6.3. LAW 1150 of 2007

Subsection 4 of article 13 of Law 80 of 1993 was repealed by 32 of Law 1150 of 2007.

In relation to subparagraph 4 of article 13, there are two close antecedents of Bill. Bill No. 20 of 2005, Commission I, Senate. Passed in first debate in December 2005[74].

The previous Bill was later accumulated with 057 of 2006 of Camera.

The versions approved in plenary sessions of the Senate and the Chamber can be consulted in the Chapter of the Normative Annex at the end of this publication, together with the assessments made on them by SOCIAL ACTION.

As a result of the study carried out by the Accidental Conciliation Commission, clarifications were introduced to overcome the discrepancies between the texts of the Senate and the Chamber were also taken into account, although partially, the opinions of the Government, through different public entities that supported and presented specific projects of international cooperation and reasoning regarding the nature of international cooperation, the will of the donor protected by the National Constitution, international relations and treaties or cooperation agreements signed by the Republic of Colombia.

On July 16, 2007, Law 1150 was issued, through which measures for efficiency and transparency are introduced in Law 80 of 1993 and other general provisions on contracting with public resources.

Article 1 of the same establishes that this law "has the purpose of introducing modifications in Law 80 of 1993, as well as dictating other general provisions *applicable to all contracts with public resources*".

Article 20 regulates contracting with international organizations, in the following sense:

> *"Contracts or agreements financed in their entirety or in amounts equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, they will be submitted to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment.*
>
> *Contracts or agreements entered into with foreign persons under public law or international law organizations whose purpose is the development of health promotion, prevention and care programs; contracts and agreements necessary for the operation of the ILO; contracts and agreements that are executed in development of the integrated illicit crop monitoring system; contracts and agreements for the operation of the world food program; contracts and agreements for the development of programs of*

74 Another antecedent of a bill amending subparagraph 4 of article 13 of Law 80 of 1993: Bill No. 035 OF 2004 – Chamber. Cumulative with bills 083 and 086
–Camera 2004.

educational support for displaced and vulnerable populations advanced by UNESCO and IOM; contracts or agreements financed with funds from multilateral credit organizations and foreign government entities may submit to the regulations of such entities.

State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies.

Paragraph 1. Contracts or agreements entered into with foreign persons under public law may be subject to the rules of such organizations.

Paragraph 2. The state entities will have the obligation to report the information to the control organisms and to Secop regarding the execution of the contracts referred to in this article.

Paragraph 3. In any cooperation project that involves state resources, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity, must be quantified in national currency. The comptrollers will exercise fiscal control over the projects and contracts entered into with multilateral organizations."

Article 31, ibid., establishes a transition regime, and provides:

"The contracting processes in progress on the date on which this law comes into force, will continue to be subject to the regulations in force at the time of its initiation. The contracts or agreements referred to in article 20 of this law that are in execution at the time of their entry into force, will continue to be governed by the regulations in force at the time of their execution until their liquidation, without it being possible to add them or extend them".

Decree 2474 of 2008, issued on July 7, which partially regulates Law 80 of 1993 and Law 1150 of 2007, on methods of selection, advertising, objective selection and other provisions, establishes in its article 85:

"Regime applicable to international cooperation contracts or agreements. Contracts or agreements financed in their entirety or in amounts equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, the contracts or agreements entered into with public resources of national origin will be subject to the procedures established in the General Public Contracting Statute.

In the event that the amount of the contribution from a national or international source is modified or when the effective execution of the contributions is not carried out in the initially agreed terms, the state entities must modify the contracts or agreements, in such a way that comply as established in the previous paragraph.

The resources generated in the development of the contracts or agreements financed with funds from the cooperation, assistance or

international aid referred to in the first paragraph of this article will not compute for purposes of determining the percentages there ready.

Contracts or agreements financed with funds from multilateral credit organizations, foreign government entities or foreign persons governed by public law, as well as those referred to in subparagraph 2 of article 20 of Law 1150 of 2007, will be executed in accordance with the provisions of international framework and complementary treaties, and in the agreements entered into, or their regulations, as the case may be. In all other cases, the contracts or agreements in execution at the time Law 1150 of 2007 comes into force will continue to be governed by the regulations in force at the time of their execution until their liquidation, without it being possible to add or extend them.

Paragraph. The agreements referred to in this article must be directly related to the purpose of the cooperation, assistance or international aid that is contemplated in its regulations or creation rule".

In relation to the above regulations, the following reflections should be made, for the sake of their understanding in light of international cooperation:

1. We understand that Law 1150 of 2007 and Law 80 of 1993, which contemplate the General Contracting Statute of the Public Administration, have for the purpose of establishing the rules and principles that govern the contracts of state entities and contracting with public resources, as provided in article 1 thereof.

2. State entities are those cataloged as such in article 2 of Law 80 of 1993 and for the purposes of said law.

3. In this sense, these normative precepts do not have the scope of imposing obligations to persons or subjects of law of a national or international nature that do not have the legal nature of state entities, contemplated in article 2 of Law 80 of 1993. Within these persons, there are international organizations, subjects of international law, governed by its regulations and in relation to the Colombian State, by the headquarters agreement or international treaty that has created them or that has been signed with them.

   These rules are not addressed either to foreign government entities, foreign public law entities or multilateral credit organizations, all of which are governed by the international treaty or headquarters agreement that has created them, their regulations or statutes.

4. The subjects of application of said norms are the state entities.

5. State entities, as recipients of the afore mentioned laws, have the obligation to agree in the agreements they celebrate, the clauses or provisions to fully comply with national legislation, as provided in them. In this case, if the international entity accepts the conclusion of the agreement in these terms, the origin of such obligation is of a conventional nature; does not have its origin in the law, of which it is not the addressee.

6. In this sense, it should be clarified that one thing is to be subject to the application of Law 80 of 1993 and another is the voluntary application by an international entity of the "procedures established in Law 80 of 1993", an expression used by the Subsections 1 of Article 20 of Law 1150 of 2007 and Article 85 of Decree 2474 of 2008.

7. The foregoing, which has its origin in the autonomy of the will embodied in the respective agreement, does not imply for the international entity the renunciation of the prerogatives, immunities or privileges that, due to its character as such, correspond to it and are contemplated in the treaty headquarters agreement or regulation that governs it.

8. In this way, public entities continue to be the recipients of compliance with said regulations (Laws 80 and 1150), subject to fiscal control; its public officials, disciplinary subjects, qualities and conditions that are not transmitted to international entities. These controls are exercised over state projects and entities. The entities have the burden of delivering to the control agencies all the information related to the execution of such conventions or agreements, based on the information that the international agencies report to them. Correlatively, state entities have a duty to follow up and must clearly agree on the delivery by international organizations of technical and financial reports and information and supports in the periodicity and conditions that allow to provide the information required by the control bodies, for the full exercise of its function.

9. Administration of resources by international cooperation, assistance or aid organizations.

In relation to the meaning and scope of the provisions of articles 20 and 31 of Law 1150 of 2007, it can be said that they have their origin in the legislature's understandable reaction to the increasingly frequent practice in recent years of territorial entities and nationals to deliver public resources to international organizations in mere “administration” and under the guise or name of “agreements or cooperation agreements”, which were not, to carry out intermediation work in contracting and payments, allowing the application of the national contracting norm, evading procedures such as public bidding and principles such as budget annuity, typical of the Organic Statute of the Budget; simultaneously ignoring and exceeding the purpose for which such international organizations had been created, exceeding the limits of their action contemplated in the treaty or agreement where they were created. Very different is the situation of the contribution of public resources or the receipt of cooperation resources by state entities, for the joint execution of international cooperation projects in favor of development for the country.

10. Such “administration of public resources” agreements were the cause and fundamental reason for the concern and prevention of the legislator; At no time did it intend to obstacle or hinder the execution of true international cooperation projects, where the international contribution and the efficient and appropriate intervention of the international organization are evident

in achieving the objectives of real projects of development in benefit of the country.

As a consequence of the foregoing, Article 20 of Law 1150 of 2007 emphatically provided:

a. "State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation agencies, *international aid or assistance*" (paragraph 3).

b. Now, for events other than resource administration, which, as we have seen, is prohibited, and in relation to true international cooperation projects and with these same international entities and given the legislator's prevention of the "mere administration" practices that they carried out, provided that "Contracts or agreements financed *in its entirety or in sums equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment.*" (paragraph 1).

c. For the sake of compliance with the provisions of the previous paragraph, subparagraph 2 of article 85 of Decree 2474 of 2008 established for the agreements that in ahead are celebrated[75] that "In the event that the amount of the contribution *of national source or international is modified or when the effective execution of the contributions is not carried out in the initially agreed terms, the state entities must modify the contracts or agreements, in such a way that the provisions of the previous paragraph are complied with.*".

d. In order to effectively comply with the foregoing, it established that "In all cooperation projects that involve state resources, the contributions in kind of the entity must be quantified in national currency, *cooperating organization or person, as well as those of the Colombian national entity. Comptrollerships will exercise fiscal control over projects and contracts entered into with multilateral organizations*". (Paragraph 3). Likewise, that "State entities will have the obligation to report the information to the control agencies and to Secop regarding the execution of the contracts referred to in this article (Paragraph 2)". (The underlining is ours).

   Note how they are obligations referred to state entities and projects and contracts, not international organizations.

11. International cooperation.

It is important to maintain the distinction between international cooperation and administration of resources by international organizations. For this purpose, it is important to bear in mind the Concept of International Cooperation:

International Cooperation is understood as joint action to support development

75 Whenever those already concluded and are in execution at the entry into force of said decree, July 7, 2008, will continue to be governed by the regulations in force at the time of its celebration.

economic and social development of the country, through the transfer of technologies, knowledge, experiences or resources by countries with equal or higher level of development, multilateral organizations, non-governmental organizations, government and civil society. It is also known as development cooperation and is a global concept that encompasses different aid modalities that flow to relatively less developed countries.

International Cooperation is carried out through various modalities, among which are technical, scientific and technological cooperation; The cooperation non-refundable financial; reimbursable or concessional financial cooperation; donations; humanitarian action; cultural and educational cooperation; political cooperation; and military cooperation.

It is based on the principles of international solidarity, co-responsibility, partner work, mutual interest, sustainability, equity and efficiency.[76].

12 Once it prohibits the delivery in administration of resources to international cooperation, assistance or aid organizations and determines a regime of percentages with these same entities, the legislator enters to determine what is the applicable contracting rule or regulation in contracts or agreements, for special cases , which in his opinion and after hearing the justifications of the government entities, the members of the Conciliation Commission of the texts of the Senate and Chamber, accepted.

In this sense, the legislator foresaw in subsection 2 and in paragraph 1 of article 20, some situations of a special nature, in which the contracts or agreements entered into may be subject to the contracting regulations of foreign entities, under criteria of its object, the source of financing or the nature of the parts, namely:

For the object:

a) The contracts or agreements entered into with foreign persons under public law or international law organizations whose purpose is the development of health promotion, prevention and care programs; contracts and agreements necessary for the operation of the ILO;

b) Contracts and agreements executed in development of the integrated illicit crop monitoring system;

c) Contracts and agreements for the operation of the world food program;

d) Contracts and agreements for the development of educational support programs for displaced and vulnerable populations advanced by UNESCO and IOM;

By the origin of the resource or source of financing:

a) Contracts or agreements financed with funds of multilateral credit organizations and foreign government entities.

b) Contracts or agreements financed with funds

76 Concept adopted by the Social Action International Cooperation Directorate, based on the OECD definition and derived from the International Cooperation Treaties and Agreements signed by the National Government.

of foreign government entities.

Due to the nature of the parts:

a) Contracts or agreements entered into with foreign legal public persons.

Regarding the application of the provisions of subsection 2 and paragraph 1 of article 20 of Law 1150 of 2007, in the specific conditions, events and situations contemplated therein, which are related to the object of the agreements, the origin of the resources or the nature of the parts, will be able apply the regulation of such entities, without the criteria for this purpose being the percentage of national or international financing participation of the agreement.

A contrary interpretation would be to invalidate the application of the legal consequence provided for in the second paragraph, very different from that established for the subjects and assumptions of fact contemplated in the first paragraph.

13. Subsection 1 of article 20 of Law 1150 of 2008, subsection 4 of article 85 of Decree 2474 of 2008, international treaties and the will of the donor of constitutional protection

A careless reading of what is established in paragraph 1 of article 20, ibid, could lead to the conclusion that the application of the provisions of the International Treaties is left aside, for the cases in which they are commitments acquired by the Colombian Government in development of the Agreements or Framework Treaties that have been signed with the States or International Organizations, in which the application of the cooperant rule has been expressly agreed upon, regardless of the percentage of their participation in the cooperation operation or project.

In cases where a donation is not based on an international treaty, the will of the cooperator or donor, protected by the Political Constitution in article 62, would also be disregarded, when they have expressed their interest in applying their contracting regulations with respect to the resources it provides for the execution of a project for the benefit of the country.

This particular, that is, the execution of international cooperation resources under the regulations of the donor or cooperator, has been the object of special analysis and there is considerable clarity about it, even more so with the pronouncement of the Constitutional Court contained in Judgment C-294 of 2004, in relation to the enforceability of subsection 4 of article 13 of Law 80 of 1993.

In the opinion of the Attorney General of the Nation, accepted by the Honorable Constitutional Court, in the chapter of Considerations and Basis of said providence, it is stated:

> *"Note that in the case of donations, the challenged rule is adjusted to article 62 above, when it provides that the destination of donations for purposes of social interest cannot be changed unless the object of the same disappears. So, it is not reasonable to ignore the will of the donors, which can be reflected in the decision that the receiving entity accepts its regulations, through which it can intervene in the formation, award and execution of contracts financed with its resources."*.

It is for this reason, that subsection 4 of article 85 of Decree 2474 of 2008

establishes that “Contracts or agreements financed with funds from multilateral credit organizations, foreign government entities or foreign persons governed by public law, as well as those referred to in subsection 2 of article 20 of Law 1150 of 2007, They will be executed in accordance with the provisions of the framework and complementary international treaties, and in the agreements concluded, *or its regulations, as the case may be*”.

In sum, and in relation to subsection 1 of article 20 of Law 1150 of 2007 and in accordance with the provisions of subsection 4 of article 85 of Decree 2474 of 2008:

a) The application of the procedures established in Law 80 of 1993, contemplated in subparagraph 1 of article 20 of Law 1150 of 2007, refers to resources of national public origin (as opposed to those of an international nature), which finance agreements or contracts entered into for the execution of international cooperation projects. It does not extend to resources assessed by way of cooperation or donation from an international source.

b) The resources provided by the cooperating States, international organizations, will be executed in accordance with the provisions of the framework and complementary international treaties.

c) In the absence of an international treaty, due to the nature of the parties, such as when the cooperant is a foreign entity of public law or of another nature legal, in attention to the established in the Article 62 of the Political Constitution of Colombia, international cooperation resources are executed in accordance with the will of the donor, its criteria, rules and regulations.

d) Public resources of national origin (from territorial entities and the national order) delivered to any of the entities mentioned in paragraph 1 of Law 1150 of 2007 will be executed by the regulations of such entities or by Law 80 of 1993, according to the percentage of participation of the Parties, in the financing of the project to be executed. If the national contribution exceeds 50% of the value of the project, the resource of national origin will be governed by the provisions of Law 80 of 1993. Otherwise, that is, if the national contribution is a minority, in relation to the international contribution, for its execution it may be submitted to the regulations of such entities.

e) Since Law 80 of 1993 does not have international organizations or entities as addressees, nor does it have the potential to impose obligations on them, what is established in the previous paragraph, according to the percentages of the contributions and in relationship with the hiring regime applicable, must be agreed by the Parties to the Agreement that for the execution of the respective program or project, is held.

14. transition regime

Article 31 of Law 1150 of 2007 establishes:

> *“Transitional Regime. … The contracts or agreements referred to in article 20 of this law that are in execution at the time of its entry into force, will continue to be governed by the regulations in force at the time of its celebration until their liquidation, without it being possible to add or extend them”.*

The national norm, motivated by understandable reasons of prohibiting the delivery of public resources in administration to international organizations, cannot extend in its application and with all its consequences to the true agreements or cooperation agreements by virtue of which Colombia agrees and receives financial or technical cooperation, supported by agreements or treaties of which the Nation is a part and for the execution of programs that have a direct impact on the strengthening of governance, institutionality and attention to the needs of the country's poor and vulnerable population, and that are attended with resources that come from donors, entities or foreign governments.

Such agreements or conventions, in force, are likely to continue being added and extended, according to the will of the cooperant. The management of cooperation obeys international relations, the policies of the donors, the decisions of governments and their respective parliaments, the cooperation policies and strategies that the cooperating countries and entities have adopted for each country. The cooperation programs and projects that are agreed and have been agreed upon and are in force with the large donors exceed several terms and even the periods of government of the donors and the countries receiving such aid. The addition of resources and extension of cooperation agreements with them is also due to their budget periods and resource authorizations that the respective parliaments and governments approve.

It would not be logical or understandable for the international community and the aid workers to convey them as of the 16 of January of 2008, to celebrate new conventions, with equal object and for the execution of the same programs that have been agreed upon in previous years and are being executed in the country, based on the principles of cooperation, solidarity and national convenience, within the framework of development plans and for the attention of the national priorities that they contemplate.

An example of the above is the cooperation received from the United States of America. In development of the "General Agreement for Economic, Technical and Related Aid" dated July 23, 1962, entered into with the United States of America, between the United States Agency for International Development - USAID, foreign government entity of that State, and the Government of the Republic of Colombia, have been entering into Donation Agreements for the execution in Colombia of the so-called Strategic Objectives, such as the Donation Agreement of the Strategic Objective No. 514-007 Strengthened democratic governance, the Agreement of Donation of the Strategic Objective No. 514-008 Promote economic and social alternatives to the production of illicit crops, the Donation Agreement of the Strategic Objective No. 514-009 Support for internally displaced persons and other vulnerable groups and the Donation Agreement "Strategic Objective No. 514-010 Improved social and economic environment for demobilization and reintegration processes. These donation agreements, year after year and in accordance with the authorizations of the Congress and the Government of the United States, have been subject to additions and extensions in time that allows the execution of the approved resource.

The afore mentioned would also apply, for example, to the Specific Financing Conventions that in development of the Treaty with the European Community, have been held for the execution of the Peace Laboratories in the areas of Magdalena Medio, the Colombian Massif, Eastern Antioquia, Santander, Meta and the Montes de María Region.

Also applicable is the statement for the donations that the country receives from multilateral credit organizations, such as the World Bank and the Inter-American Development Bank - IDB, by virtue of which these donors deliver non-reimbursable cooperation resources to public entities that are beneficiaries of the development projects that they have been approved. For many reasons, including budgetary times and procedures for incorporating resources into the Nation's general budget, projects are not usually executed during the initially planned period, which is why, in most cases, the donations that are signed are subject to extensions, which are granted by the cooperators.

From the simple reading of article 31, it would not be possible, as of January 16, 2008, the addition or extension of these Donation Agreements, which have their legal basis in an international treaty or agreement and are its development.

It is for this reason that in the final part of paragraph 4 of article 85 of Decree 2474 of 2008, it is established that "In other cases, the contracts or agreements in execution at the time Law 1150 of 2007 comes into force, will continue to be governed by the regulations in force at the time of its execution until its liquidation, without it being possible to add or extend them". The expression "in other cases", which appears after a period followed, refers to contracts or agreements not financed with funds from multilateral credit organizations, foreign government entities or foreign persons governed by public law, as well as other than those referred to in subparagraph 2 of article 20 of Law 1150 of 2007.

In relation to the scope and extension of the term "international organization", the Legal Advisory Office of the Ministry of Foreign Affairs[77] has ruled in the sense that "In practice, the terms international organization and organizations are used as synonyms for purposes of their classification as entities of international public law. These are created and composed of States and international organizations; the term is also used to refer to specialized agencies of a governmental nature linked to international organizations" (emphasis added).

The foreign persons of public law are the gender, within which we find those of international public law, such as the species, category of which international organizations participate.

The foregoing means that, in relation to the transition regime, established in article 31 of Law 1150 of 2007 and in accordance with the provisions of subsection 3 of article 85 of Decree 2474 of 2008, it is applied with respect to the contracts or agreements referred to in the third paragraph of article 20, not those that expressly allow and authorize the celebration of paragraphs 1 (taking into account the concept issued by the Legal Office of the Foreign Ministry, and under the understanding that the foreign public law persons are gender, within which we find those of international public law, such as species, a category in which international organizations participate), 2nd and paragraph 1, ibid. The foregoing, under a systematic interpretation of the provisions of article 20 and 31 of the same law, celebrated prior to January 16, 2008, which meet the conditions of object, origin of the resources or nature of the parties provided for in those normative precepts, could not be extended and added in

77 Concept OAJ/CAT No. 54587 of September 17, 2004

amount, but as of that same date, new ones of the same nature and characteristics could be held, as those that are prohibited from being extended or added.

15. Entities or funds without legal status subject to a special regime. General rule - Special rule

Law 80 of 1993 and Law 1150 that modifies it is a general rule.

The provisions of article 20 of Law 1150 of 2007, a general rule, do not repeal or modify the legal regime of special funds or entities subject to a special regime or private law. In the spirit of the provisions of article 13 of Law 1150 of 2007, state entities that by legal provision have an exceptional contractual regime to the General Contracting Statute of the Public Administration will apply in the development of their contractual activity, in accordance with its special legal regime, the principles of the administrative function and of fiscal management dealt with in articles 209 and 267 of the Political Constitution, respectively, as the case may be, and will be subject to the disability regime and incompatibilities provided by law for state contracting.

6.4. A FINAL REFLECTION ON CONTRACTING PRINCIPLES AND RESPONSIBILITIES

Norms do not exist *per se*, they are an instrument to achieve objectives, to carry out principles that they develop. Although it is important to determine the norm to be applied in the execution of resources from international sources and in the national ones destined to international cooperation projects, it is important to highlight the importance for the Colombian government and the officials of the public entities that are beneficiaries and/or executors of the cooperation resources, to become fully aware of the responsibility they assume when entering into cooperation or donation agreements with the sources, with the country and ultimately with Colombians, as sole beneficiaries of the non-reimbursable international cooperation resources that the country receives.

Thus, the resources are not executed directly by public officials, but through international organizations or other executors such as NGOs, it should not be forgotten that the actions of public servants, who intervene in an important way in the development of projects they must be governed by the rules on the administration of other people's assets and by the mandates and postulates that govern a conduct adjusted to ethics and justice and to the principles of good administration. This position of non-executor, or organizer of the expense that the public official assumes when the resources, by the donor's will or by his own will, are received and executed by a third party, and given the interference that public officials have or assume in the development of cooperation projects, administration or of the public entities of which they are a part, but of the Republic of Colombia, final beneficiary of the cooperation resources.

What is important is the use of procedures that lead to adequate execution thereof, based on compliance with universal principles welcomed and enacted by all sources of cooperation, such as transparency, equal opportunities to access contracting, good faith, economy, efficiency, effectiveness and objective selection, all principles developed by Law 80 of 1993 , which ultimately is a law of principles.

One last very important principle: that of planning. If there were true and adequate planning in all projects, there should be no problems at the time of starting the execution of the resources. But when it has not occurred, once the disbursement of cooperation resources is near, those responsible for its execution begin to see in the applicable legislation the obstacles to the execution of the cooperation they have received, when in fact the obstacle It has its origin in previous stages such as the preparation of the respective project, where planning is the backbone and where those responsible had to foresee, for example, the incorporation of resources into the budget and then have the budget appropriation to execute them in the future. time of the start of project activities or knowing and sufficiently analyzing the donor's contracting rule or regulation, in such a way that the execution of the project is not delayed over time for this reason,

Ultimately, the inconvenience is not found in the norm, both the national norm and the foreign one or that of the source, but rather in the imminent need to execute the resources, which has no reason to exist if there had been adequate planning for its execution.

Chapter 7

Agreements

of cooperation

7.1. CONCEPT

Is a form of contracting through which, under the modality of contributions, two entities deliver goods or services, with the purpose of achieving a common objective, generally advancing a project in compliance with the will of the donor source.

7.2. SUBJECTS

The subjects involved in this agreement: the receiving entity of the non-reimbursable aid, assistance or cooperation resources and another or others generally of a public or private non-profit nature (associations, corporations or foundations, union or community institutions), whose corporate purpose is directly related to the execution of the project.

7.3. FEATURES

It is a collaboration agreement. This implies that the parties undertake jointly to comply with obligations or benefits aimed at achieving a common objective, a program, project or international cooperation activity.

1. You contribute given that, by definition, cooperation agreements require joint action, it is necessary for there to be a real and effective contribution from the participants.
2. It is important to highlight that such goods or resources are delivered and received by the parties to the agreement as contributions and not as payment, remuneration or consideration for the obligations they contract.
3. These contributions come of the international cooperative font and of the national party, beneficiary of the cooperation project, in this latest case, called national counterpart resources.
4. The mutual contribution may have an exclusive component or mixed financial or technical cooperation. It may then consist of money or in kind (experts, services, studies or goods).

5. It generally has a participatory character. It binds the beneficiaries in the formulation, execution, supervision or control of the project. Likewise, you can commit resources such as the community workforce.

7.4. DELIVERY OF MEANS OF NATIONAL GOVERNMENTIN COOPERATION AGREEMENTS[78]

The obligations contained in an international treaty are mandatory, not only because it is so determined by public international law, but also because the Constitutional Court has confirmed it in the same internal order.

In this way, it turns out that Colombia undertook to make contributions, including in money, to the UNDP for the execution of projects that are specified in complementary agreements, which fall within the orbit of the International Organization and are regulated in accordance with the provisions of the Agreement, which are mandatory for the parties, and the regulations or resolutions of said organization as this is what the Convention itself orders.

Thus, it is clear that at the moment that contributions are made to the UNDP, they enter the Agency and must be subject to its financial regulations, as agreed in Articles V and VI of the Agreement, that is, they enter the orbit of Public International Law.

Now, it is wrong to interpret that when it is stated that the UNDP is the administrator of the contributions it means that the contributions made by Colombia to the UNDP continue to belong to the Government and that they are therefore subject to the internal provisions on the national budget and that the UNDP only manages them.

What happens is that for the purposes of the execution of the Project it is essential that there be an administrator of the resources destined for said project and that task is assigned to the UNDP. Once the Colombian contribution enters the UNDP, it leaves the orbit of domestic law and is regulated by Public International Law, specifically by the provisions of the Agreement, which refers to the rules that this International Organization has stipulated for this purpose.

In conclusion, the International Cooperation agreed in international treaties and its execution through complementary agreements are regulated by public international law and it is not appropriate, in accordance with that international regulation recognized by Colombia, to allege provisions of internal law to condition, limit or fail to comply with the obligations contracted in said international instruments.

7.5. BUDGETARY EXECUTION OF MEANS THROUGH INTERNATIONAL COOPERATION AGREEMENTS

From a budget point of view, the execution of resources through agreements between public bodies and foreign persons under public law,

78 This is an important concept, which on this subject and the United Nations Development Program issued by the Legal Advisory Office of the Ministry of Foreign Affairs. OJT 20541 – 29170. June 5, 1996.

International cooperation, assistance or aid organizations operate as follow[79]:

Executing an appropriation of the budget consists of deciding the opportunity to hire, commit and order the expenditure of the bodies referred to in article 110 of the Organic Statute of the Budget.

Thus, when the Colombian Government contracts obligations through an International Treaty or in its development, by virtue of the "pacta sunt servanda" principle, the obligations contracted therein are mandatory and public entities must carry out all actions aimed at guaranteeing the compliance with the commitments agreed between the parties.

Regarding these contracts entered into between state entities and foreign legal entities of public law or financed by the latter, Law 80 of 1993 in its article 13 in its subsection 4 provides:

> "Contracts financed with funds from multilateral credit organizations or entered into with foreign persons under public law or international cooperation, assistance or aid organizations may be subject to the regulations of such entities in everything related to formation and award procedures and special clauses, execution, compliance, payment and adjustments.

So that if there are agreements in which there is cooperation from foreign persons under public law or cooperation, assistance or international aid organizations or are financed totally or partially by them, it is understood that the object of the appropriation has been executed and developed with the subscription of the agreement and are governed by International Law, since it is based on an International Treaty accepted by the Colombian Government, whose obligations contained therein are mandatory.

It is important to review the concept issued by the Legal Office of the Comptroller General of the Republic[80] in which it is stated that "the resources of the General Budget of the Nation that are executed through the execution of contracts with International Cooperation Organizations, as is the case of the UNDP, are not subject to the principle of annuality budget and for this reason only at the moment in which the term for fulfillment of the contractual object must proceed to its liquidation to establish the amount of the obligations in charge of the parties. If unexecuted balances result, they will be reimbursed to the General Directorate of the Treasury".

This concept was officially accepted by the Comptroller General of the Republic, who through Circular 80110-0002 of June 12, 2002, addressed to the Delegate Comptrollers, Directors, Managers and Departmental Managers, indicated in relation to that concept and others in that sense "they are a useful tool that can be considered by the dependencies of the Comptroller General of the Republic, in exercise of the fiscal control that corresponds to them".

The execution of resources from the general budget of the Nation through international cooperation agreements, when delivered in development or as a contribution of international cooperation agreements, it has been applied with good judgment, but its origin is of an administrative nature.

79 Concept No. 5633 General Directorate of the National Budget, May 22, 2001.

80 Concept of May 9, 2002, in relation to the query made by the Administrative Manager and Financial of the CGR.

As we have had the opportunity to express, it has its source, mainly, in concepts from the Legal Office of the Ministry of Foreign Affairs, which have been repeatedly collected and accepted by the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit, as well by the General Comptroller of the Republic[81].

Since it is a legal opinion of entities, with sufficient legal basis and authorized in the matter of their competence, that is international relations, the public budget and fiscal control, for the sake of its ratification, certainty and security of the executing public entities and/or beneficiaries of international cooperation, of the expense managers and as the operators of the budgetary, fiscal and disciplinary norm, it has been considered convenient that it has a legal consecration[82].

In different initiatives to modify the Organic Statute of the Budget, the bills have contemplated articles that regulate the execution of the resources of the general budget of the Nation through cooperation agreements, clearly establishing that when it is a mere task of intermediation or administration of resources of said origin, they are not understood to have been executed.

For the Ministry of Finance and Public Credit, there has always been clarity about when public resources are understood to have been executed, that is, when there is a real component of international cooperation. In turn, there is clarity about the non-execution of the same, when it comes to the celebration of so-called "cooperation agreements", which are not so due to the nature of the obligations agreed therein, typical of figures of delivery in administration, intermediation or the fiduciary commission modality.

In this sense, the Ministry in the Bill presented for consideration by the Congress of the Republic, No. 194 of 2003 Chamber, states:

> "If the time to carry out the contracting is not enough with respect to the norms that regulate it, as a result, for example, of late additions to the budget, then the contracting will suffer from vices and transparency will be sacrificed. The incentive of every receiving entity is to execute the budget appropriations and not lose them. As far in which the follow-up of the contractual process implies the loss of the appropriation or the resource, false executions will be resorted to, as is the case of some contracts entered into between the bodies and those executed through international cooperation agreements". The Ministry adds that "...the effects of budget programming problems are not restricted to the aspects of efficiency and macroeconomic balance which have been mentioned. Added to this is the problem of unnecessary hiring and what could be called 'false budget execution'.
>
> "A recurring phenomenon of Colombian budget execution is the concentration of contracting in the months of December, in order not to lose the appropriations. When the budget period is about to end, the order is to contract: contract what can be done and how it can be done. Induce

81 Concept OJT 20541-29170. June 5, 1996. Legal Office of the Ministry of Foreign Affairs.

V. gr. Concept No. 5633 General Directorate of the National Budget, May 22, 2001.

Circular 80110-0002 of June 12, 2002 addressed to the Delegate Comptrollers, Directors, Managers and Departmental Managers.

Concept of May 9, 2002, Legal Office of the Comptroller General of the Republic, in relation to a query made by the Administrative and Financial Manager of the CGR.

82 See in the Regulatory Annex of this publication the Draft Law prepared by Acción Social, inApril 2006.

a budget reserve to be developed in the following year or commit the resources to a fiduciary entity. This corresponds to a false budget execution, one in which the real executor or provider of the good or service is not contracted, but with an entity that acts as an intermediary, in principle, in order to save the appropriation.

The signed agreements, which are called “International Cooperation and Technical Assistance”, have become intermediation contracts referring to the administrative and financial management of the resources they receive to be administered, distorting the very purpose of the afore mentioned agreements. Thus, not only is the purpose of international cooperation not being fulfilled, which is to improve the capacities for the development of the beneficiary, but also a path has been established that allows the current budgetary and contractual order to be broken.

Second, this bill contemplates the conditions, requirements and different modalities for the execution of the budget, among others, through legal transactions, international cooperation agreements and contracts between the different bodies. This in order so *that the entities have a regulatory framework that allows them to act with certainty, complying with all the procedures prior to the acquisition of commitments and obligations. It should be noted that this project develops the execution through international cooperation agreements, determining as a characteristic of these agreements the existence of international contributions, in kind and/or cash, excluding from this modality those events in which the contributions are exclusively from the National Public Budget*” (italics ours).

7.6. DELIVERY OF RESOURCES IN ADMINISTRATION DOES NOT EXECUTE THE OBJECT OF THE APPROPRIATION

Although the main theme of this chapter is that of the Cooperation Agreements, since under the name of "cooperation agreements" they were celebrated in previous years, more frequently, contracts or agreements whose object and legal nature due to the content of their obligations were of administration of public resources, without any component of international cooperation, we will deal with this topic.

It is possible to distinguish between the figures of resource administration and execution of projects, very different and valid modalities of agreements, mainly used by the Financial Fund for Development Projects - Fonade, in the development of its mission objective. In the first of them there is an obligation of means, there is a work of intermediation, of administration itself; while in the second, the obligation is one of result, whoever receives the resource makes it their own, commits to execute the project, achieve its objectives, carry out the planned activities, and is responsible for the result. In this second event, the approval is executed.

In relation to this issue, the Ministry of Finance and Public Credit has ruled in the following sense[83].

83 Concept No. 008889 (1126). Bogotá, March 30, 1999. General Directorate of the National Budget.

The Administrative Department of the Presidency of the Republic signed a resource administration contract with the Financial Fund for Development Projects, Fonade, on December 29, 1997, for the sum of $1,700,000,000.00, agreeing on disbursements of 50% with budget for the fiscal period of 1997 and the balance for 1998 prior constitution of the corresponding budgetary reserve...

On the other hand, Decree 568 of March 21, 1996 “By which Laws 38 of 1989, 179 of 1994 and 225 of 1995 Organic of the General Budget of the Nation are regulated”, he warns:

> "Article. 38. The budgetary reserves and accounts payable constituted by the bodies that make up the General Budget of the Nation, which are not executed during the year of their validity, will expire”.

Article 21 ibid establishes that: “The resources delivered to be handled through legal transactions that do not develop the object of the appropriation, do not constitute budgetary commitments that affect the respective appropriation, with the exception of the remuneration agreed for the provision of this service”.

In accordance with the preceding provision and since Fonade acts as a third party that administers resources from the national Budget, said legal transactions do not develop the object of the appropriation by themselves; therefore, it must be attached to the budget rules that regulate the matter.

Thus, the signing of the Agreement with Fonade for the management of the resources provided by the Nation does not imply that they have been executed, since with the execution of this Agreement the object of the appropriation is not being developed, simply is contracted with a third party so that it develops the object of the same, so that, while it does not carry out its assignment, it has not complied with authorization.

However, if the assignment of administration of resources in development of the object of the Agreement acquires commitments charged to the resources of the current fiscal period, the corresponding budgetary reserves may be constituted that allow it to meet the duly acquired obligations during the next year.

7.7. ADMINISTRATION OF RESOURCES THROUGH AGREEMENTS CALLED COOPERATION WITH INTERNATIONAL ORGANISMS

It is important to mention that although, in some events, due to the way in which the obligations of the aforementioned contracts, agreements or conventions are structured and drafted, it is not easy to determine the international cooperation component with absolute certainty, it is no less certain so that for the control bodies, there is absolute conceptual clarity about what constitutes and implies a contractor agreement of simple and mere administration of resources.

The Attorney General's Office has expressed its opinion regarding the signing of cooperation agreements by public entities with international organizations. Specifically, in relation to the delivery modality in simple administration of public resources to international organizations, through the signing of agreements that have been called “international cooperation”.

We present a summary of the position of the Special Disciplinary Commission of the Office of the Attorney General of the Nation in relation to the specific case of the execution of Agreements between a territorial entity and an international organization[84].

a) The purpose of entering into Cooperation Agreements with international organizations.

- This type of agreement cannot be entered into under the pretext of using the private law in the execution of the resources that are delivered.

  By doing so, the Administration would be stripped of the prerogatives granted to it by Law 80 of 1993 (particularly the possibility of stipulating in the contracts the so-called exceptional clauses to the common law of interpretation, modification and unilateral termination, administrative expiration, among others).

  Law 80 of 1993 is the General Contracting Statute of the Public Administration.

  "... it is not proven in law, that for the exercise of the Public Administration, specifically for the achievement of the essential purposes of the State, it can be understood that by virtue of an interested interpretation of what International Cooperation can mean and in the development of an agreement, the public administrative structure can be replaced subject to internal rules and procedures of domestic administrative law by the administrative structure of the contractor, in this case an international cooperation entity subject to the rules of private law, so that the latter performs exactly the tasks that the Political Constitution entrust to the first".

- In the celebration of such agreements there must be an added value for the benefit of the administration or for the administered community; the ability to commit resources in accordance with the rules of private law cannot be the only consideration received from the international organization.

- These agreements cannot be a subterfuge to use a third party to contract on behalf of the Administration specificities that required regulated, special and specific legal procedures such as bidding, if the authority had carried them out directly and by itself.

- It is questioned that an international entity places its supranational prestige and investiture at the service of unorthodox public administrators.

b) The selection of the international organization.

- The choice of the international organization must be preceded by a objective selection process.

- It is necessary to study the purpose of the international organization with which the agreement is going to be signed and determine if it is part of the activities to be carried out in its development.

- A contract can be concluded directly with an international cooperation entity,

84 Resolution No. 001 of July 16, 2001. Special Disciplinary Commission. Arauca Governorate.

when the purpose of the cooperation is specific and lawful, but not only for the purpose of executing budget items of public entities.

c) The content of the Cooperation Agreement:

- They cannot be contemplated in the Agreements for celebrating indeterminate objects. The project or program to be executed must always be determined.
- The policies that guarantee the activities of the contractor (international entity) must be sufficient in such a way that in the event of a claim (because they are high-risk contractual objects such as financial management and subcontracting) the resources of the State are not put at risk. (15% at the discretion of the Attorney is not enough).
- The money must be delivered to be executed in projects that will be carried out in the immediate future. They cannot be kept for long periods of time in the hands of the administrator. They should not be delivered in their entirety, but to the extent that the needs of the projects or programs require them. (In the case of the territorial entity, 100% of the resources were delivered when the agreements were signed, and some subcontracts were signed six months later).
- It must be agreed that the resources delivered must produce interest which belong to the contracting public entity.
The money delivered cannot lose its purchasing power over time. The contrary would configure a benefit for the contractor (international organization) and for the subcontractors.
- The contracts entered into by the international organization must be preceded by procedures that allow the choice between various proposals in an objective manner (compliance with the duty of objective selection) and it is not advisable that the appointment of subcontractors be reserved to the Administration that has not executed a previous procedure of objective selection of the same.
- The jurisdiction of inviolability that international organizations have, makes the clauses of the agreements that are celebrated with them regarding the request for reports, supervision and surveillance by public entities become innocuous given the jurisdiction of "inviolability of goods, assets and files" that they possess, endangering the public treasury.

d) Other shortcomings incurred:

- The contracts were legalized in the following term, in particular the policies They were signed in January 2000.
- Resources were committed to projects that lacked support and economic viability of the Bank of Projects.

On the occasion of the intervention within the processing of the claim of unconstitutionality to paragraph 4 of article 13 of Law 80 of 1993 and regarding the issue of administration of public resources through international organizations, the Attorney General's Office stated that "This Office cannot overlook and reproach

the recurring practice of certain entities state that pretending give scope to the fourth paragraph of article 13 of Law 80, channel the contracting through international cooperation, assistance or aid organizations, but not with resources from these entities, but from the respective public entity, with the exclusive purpose to surreptitiously avoid the processes of public bidding and in general of the contractual statute. For this reason, said subsection is only enforceable and its application is valid only in the case of loan contracts or others, if resources from international entities or organizations are incorporated into them. Otherwise, the applicable rule will be the Colombian contract. Thus, for example, in public resource management contracts entered into with international bodies, it is clear that the rule of paragraph four cannot be applied, since there are no resources of foreign origin in them, an essential condition required by paragraph accused. Being clear that in such events the international bodies are developing a typical administrative function, function that must be subject to article 111 of Law 489 of 1998, which in turn refers to Law 80 of 1993 and its exceptional clauses. Therefore, the manner in which said contracts or agreements are concluded, as well as their execution, will be subject to fiscal and disciplinary controls"[85].

85 Judgment C-294 of 2004.

Chapter 8

Agreements
Inter-administrative

8.1. CONCEPT

Inter-administrative contracts are those that are celebrated between state entities to obtain the object and purposes for which they were created, foreseen in its rule of creation.

8.2. SUBJECTS OR PARTIES

Law 80 of 1993 establishes which entities for the purposes of the application of said law are considered state. The foregoing implies that all these entities must be subject in the execution of their resources and in the execution of contracts to the provisions of the General Contracting Statute.

It is important to highlight that within the state entities subject to such a regime are the indirect decentralized entities and the other legal persons in which there is public majority stake, any whatever denomination they adopt, at all orders and levels.

Likewise, also for the purposes of the application of said Statute, cooperatives and associations made up of territorial entities are called state entities, especially when in the development of inter-administrative agreements enter into contracts on behalf of said entities[86].

From the foregoing, it follows that the contracts entered into by state entities with this class of entities are considered inter-administrative. Additionally, implies the subjection of the same to the Contractual Statute.

8.3. SPECIAL REGULATION

Law 80 of 1993 establishes, in relation to inter-administrative agreements, a special regime:

1. Will dispense the use of clauses or provisions that are exceptional to common law.

86 Letter a) and paragraph of Article 2 of Law 80 of 1993.

Termination, modification, unilateral interpretation; expiration[87].

2 In this event, an inter-administrative agreement is concluded directly[88], provided that the obligations derived from them are directly related to the object of the executing entity indicated in the law or in its regulations. Contracts for construction, supply, fiduciary commission and public trust are excepted when public higher education institutions are the executors. These contracts may be executed by them, provided that they participate in public bidding or abbreviated selection processes in accordance with the provisions of numerals 1 and 2 of this article.

In those events in which the regime of the executor is not that of Law 80 of 1993, the execution of said contracts will in any case be subject to the principles of the administrative function referred to in article 209 of the Political Constitution, to the duty of objective selection and the regime of disabilities and incompatibilities of Law 80 of 1993 except in the case of public higher education institutions, in which case the celebration and execution may be carried out in accordance with the specific regulations of hiring of such entities, in accordance with the respect for university autonomy enshrined in article 69 of the Political Constitution.

In those cases in which the executing state entity must subcontract some of the activities derived from the main contract, neither it nor the subcontractor may hire or bind the natural or legal persons who have participated in the preparation of the studies, designs and projects that are directly related to the object of the main contract.

They are excepted from the figure of the inter-administrative contract, contracts insurance from state entities.

3. The guarantees in these contracts will not be mandatory. Which implies that could be agreed upon[89]. (Principle of economy).

4. They are subject to the autonomy of the will. In development of this principle, Law 80 of 1993 is not applicable in its entirety, being able to deviate from it in matters such as the payment of advances that exceed 50% of the value of the Agreement[90].

5. Although these contracts do not give rise to publication rights in the *Diario Unico de Contratación*, they imply for public entities the fulfillment to include them within the list of contracts that exceed 50% of the lowest amount, which must be sent to the National Printing Office on a monthly basis[91].

87 Paragraph of article 14 ibid.
88 Numeral 4 of article 2 of Law 1150 of 2007.
89 Article 7 Law 1150 of 2007.
90 Concept of the State Council to the Social Solidarity Network.
91 Article 61 of Law 190 of 1995 in accordance with 96 of Decree 2150 of 1995.

Chapter 9

Budget

General of the Nation and non-reimbursable International Cooperation resources

9.1. THE POLITICAL CONSTITUTION

When analyzing the content of the constitutional norms, it follows the need to include in the General Budget of the Nation, the resources from international cooperation that public entities receive as an essential requirement for its execution.

This involves incorporating both the budget for income and expenses and therefore be able to count on the appropriation or spending quota to execute them.

The Fundamental Charter in title XII “of the economic regime and public finances”, chapter III, contains the higher regulations on the revenue budget, the appropriations law, the national development plan and its guiding principles.

Article 345 above orders that in peacetime no contribution or tax may be received that does not appear in the income budget, nor is it possible to make an outlay charged to the treasury that is not previously included in the expenses budget. In addition, it provides that no public spending or credit transfer may be made if it has not been decreed by Congress (or by the assemblies or councils of the districts or municipalities, as the case may be), unless it is provided for in the respective budget. Likewise, article 347, ibid., provides that the appropriations bill must contain all the expenses that the State intends to carry out during the respective budget term.

9.2. THE ORGANIC STATUS OF THE BUDGET

The income and expenses of public entities and in general of those dependencies of them that are a Section of the General Budget of the Nation must form part of the budget of income and expenses of the same.

As per to article 15 of the Organic Statute of the Budget, which establishes the budgetary principle of universality, “the budget will contain all the public expenditures that are expected to be made during the respective fiscal period. Consequently, no authority may make public expenditures, disbursements charged to the Treasury or transfer any credit, which do not appear in the budget”.

This principle of the budget system in relation to non-reimbursable international assistance or cooperation resources is developed in article 33 of the same Statute, which establishes that they are part of the income budget of the General Budget of the Nation and will be incorporated to the same as capital donations.

The Budget Programming Manual defines donations as income without consideration, but with the destination established by the donor, received from other Governments or public or private institutions of a national or international character.

The Council of State has stated that these donations are made in money or in kind, are delivered to the State and enter its assets and, therefore, are considered occasional income that must form part of the public budget[92].

> "Such income, as its name indicates, is accidental, unforeseen, exceptional. Within them it is necessary to include those free resources that come from third parties and that are given to the State voluntarily, such as donations from international agreements; and the donations or legacies that, in the internal order, are made by natural or legal persons. The destination of these donations for purposes of social interest, pursuant to art. 62 of the Constitution, may not be varied or modified by the legislator, unless the object of the donation disappears, and the Government must supervise its management and investment.
>
> Such free resources, as long as they are represented in money and are addressed to the State, must be included in the respective financial budget as occasional income"[93].

The organic law qualifies these resources as "a capital donation" that is part of the Income Budget, essentially occasional, and submits it to the budget following the constitutional principle, according to which, a public expenditure that does not appear in the budget cannot be made. in the expenditure budget or appropriations law, this fulfills the superior mandate of not excluding any resources, not even those obtained by donations[94].

From the above, it is concluded that in relation to the donations, the public entities, upon receiving the resources from the donor sources and in order to execute their will, must integrate them into their budget in order to subsequently order the spending on development of the appropriations incorporated in the respective Section.

Pursuant to the provisions of Article 18 of Decree 111 of 1996, by virtue of the budgetary principle of specialization, the appropriations must refer in each body of the Administration to its object and functions and will be executed strictly according to the purpose for which they were programmed.

All administrative acts that affect budget appropriations must have prior availability certificates that guarantee the existence of sufficient appropriation to meet these expenses. Likewise, have a budget record so that the resources financed with it are not diverted to any other purpose[95].

92 Consultation on donations in favor of the Nation and aid to the community, filing No. 531, Council of State, Consultation Room and Civil Service, Counselor Speaker Javier Henao Hidrón. August 31, 1993.

93 Consultation No. 531 of August 31, 1993, cited.

94 Consultation No. 1238 of December 1, 1999.

95 Article 71 of Decree 111 of 1996.

Finally, it should be added that from the point of responsibility of public officials who fail to comply with the budget regulations, article 112 of the Organic Statute of the Budget establishes that in addition to the criminal responsibility that may arise, the spending managers will be fiscally responsible and any other official who contracts obligations on behalf of official bodies not authorized by law or that issue drafts for their payments.

We consider pertinent and timely to mention the concept issued by the General Directorate of the Public Budget, in relation to the incorporation of international cooperation resources to the budget, in this case in relation to resources from UNDP[96].

> In the case of resources managed directly by the United Nations Program, UNDP, the afore mentioned regulations would not apply, since this Office shares the concept No. OJT. 20541 June 4, 1996, issued by the Head of the Legal Office of the Ministry of External Relationships.
>
> Based on the foregoing, it is possible to affirm that, when the Government of Colombia receives resources through donations or through bilateral agreements to be executed by any of the bodies that are part of the General Budget of the Nation, in this case by the ACCI, they must be included in the budget of the entity that is going to execute the expense, which must be carried out subject to the rules that regulate the matter, and in any case, respect their destination.
>
> On the contrary, if the execution does not correspond to any of the bodies that make up the General Budget of the Nation, the incorporation of the resources in the budget is not required.
>
> At this point we consider it opportune to emphasize that executing the expense, as the Constitutional Court expressed in the sentence transcribed above, means to hire, commit and order spending.
>
> Finally, it is worth noting that in the case of donations in kind whose ownership is granted to the Nation, the entry is simply recorded in the inventory of the respective entity and that said goods should not be budgeted.

9.3. THE ORGANIC STATUTE OF THE BUDGET AND RESOURCES FROM INTERNATIONAL COOPERATION

With regard to resources from international cooperation, given its nature as a non-reimbursable foreign source and its purpose of aid for development, the Organic Statute of the Budget contains a special and exceptional rule, which at the same time regulates one of the forms of its incorporation into the General Budget of the Nation, contemplates, for all budgetary purposes, the regulations applicable for the execution of resources of this nature.

Indeed, the first paragraph of article 33 of the Organic Budget Statute provides:

96 Concept No. 8848. July 7, 2000. National Directorate of the National Public Budget.

> Resources for assistance or international cooperation Non-reimbursable funds are part of the income budget of the General Budget of the Nation and will be incorporated into it as capital donations by means of a Government decree, prior certification of their collection issued by the receiving body.
>
> Its execution will be carried out in accordance with the provisions of the international conventions or agreements that originate them and will be subject to the surveillance of the Comptroller General of the Republic. (The underlining and bold are ours).

So far, occasional application has been given to what was established in the first part of the normative precept (incorporation by decree).

The most relevant, this is the one related to the form of its execution, contemplated in the second, it has not been effective; Said rule has not produced any legal effect, because despite its validity and clarity, the procedures and formalities established for the other resources that make up the general budget of the nation, have also been applied to the execution of resources from international cooperation.

The presence in the Organic Statute of the Budget of a norm that establishes a special execution regime for resources of this nature makes a legislative reform imperative, which gives them their own content and development, so that the purposes that guided and inspired the legislator with its expedition, the Keynesian postulate of the "factual power of the normative" is effective and a reality.

In this sense, the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION has been insisting for several years, with a normative proposal, to develop the special treatment that article 33 of said Statute has been contemplating since the years 1994 and 1995 in Laws 179 and 225, for the execution of resources from international cooperation, whose text can be consulted in the normative supplement chapter.

9.4. ORGANIZATION OF EXPENDITURE

Decisions on selection processes, adjudication, contracting and ordering of payment charged to international cooperation resources, implicitly carry the ordering of expenditure and in accordance with the provisions of article 110 of the same rule, this power can only be exercised in the development of appropriations incorporated in the respective section.

In this regard, the General Directorate of the National Public Budget has ruled[97] indicating that when the Government of Colombia receives resources through donations or through bilateral agreements to be executed by any of the bodies that are part of the General Budget of the Nation, they must be incorporated in the budget of the entity that will run the expense.

If, on the other hand, the execution does not correspond to any of the organs that make up the PGN, the incorporation of resources is not required; “run spending” means contract, commit and order spending[98].

97 Official Letter No. 8848 of July 7, 2000.

98 The concept of the General Directorate of the National Budget of the Ministry of Finance was issued based on what was expressed by the Consultation and Civil Service Chamber of the Council of State, Counselor Rapporteur Dr. Javier Henao Hidrón (August 31, 1993) and the Constitutional Court in Judgment C-101 of 1996.

9.5. MECHANISMS FOR INCORPORATION OF NON-REIMBURSABLE COOPERATION RESOURCES TO THE GENERAL BUDGET OF THE NATION

Taking into account the foregoing, when a beneficiary national public entity of the donation is going to execute it, they must have previously incorporated it into their budget.

This implies that for the execution of resources of a donation, it is necessary to have in the budget of the executing entity the budget appropriation or respective spending quota.

For these purposes, our Organic Budget Statute contemplates four procedures.

9.5.1. ANNUAL BUDGET LAW

In development of the principle of planning and universality already mentioned, it is up to the Government to annually prepare the General Budget Project of the nation based in the preliminary projects presented by the bodies that make up this Budget.

As of 2007, before the first week of April, the bodies that are part of the General Budget of the Nation must send the draft budget to the Ministry of Finance and Public Credit in accordance with the goals, policies and criteria of programming established in the Expenditure Framework of Medium Term[99].

But given the dynamics of the processes of negotiation and signing of agreements of non-reimbursable cooperation, for the time established in the law for the presentation of the preliminary draft budget, public entities in most cases do not have sufficient information to include the donation in the preliminary draft budget.

For this reason, to incorporate a donation into the budget of a public entity, the budgetary system contemplates three additional forms, which are described below.

9.5.2. BUDGET ADDITION LAW

This procedure implies for the public entity executing the resources of cooperation request to the Ministry of Finance and Public Credit to process a budget addition, whose approval is the responsibility of the Congress of the Republic, through the issuance of a law that increases the appropriation of the respective entity in the items and values according to the project and the value of the cooperation to execute.

The foregoing supposes the processing of a law with the debates in parliamentary commissions and in plenary sessions of the Senate and House of Representatives; later it would pass to presidential sanction and promulgation in the Official Gazette.

99 Article 47 of Decree 111 of 1996 and Article 12 of Decree 4730 of December 28, 2005, which regulates the organic rules of the budget.

This procedure could be expedited if at the time the need arises to incorporate the cooperation resources, the processing of a budget addition law is advanced, and the addition of the respective entity is included.

Otherwise, it is a rather lengthy procedure due to the constitutional and legal procedures involved in the approval of a bill.

9.5.3. NATIONAL GOVERNMENT DECREE

The Organic Law of the Budget established that the modification of the budget, which as a general rule falls to the legislature, by incorporating international assistance resources that are exceptional and subject to international agreements, could also be carried out through an exceptional procedure by decision of the Government.

On this power of incorporation by government decree, the Council of State has ruled, emphasizing the special nature of the norm contained in article 33, that is, an organic law, in the following sense:

> This precept of the Organic Law of the Budget, due to its greater legal force provided for in the Constitution, to such an extent that it conditions the "exercise of legislative activity", and therefore it is applied in preference to the ordinary law and cannot be ignored by this is applicable to autonomous and independent legal persons created by law as provided by Law 224 of 1995, article 5 and Decree 2350 of 1995, in harmony with the provisions of article 113 of the Charter[100].

Therefore, the Chamber highlights that the constituent defined the matters of qualification and denomination of income, income and budgetary expenses, their incorporation into the budget and execution, but ordered that it must be taken into account, "in addition to what is indicated in the Constitution", the provisions of the organic budget law, as discussed below in relation to assistance or international cooperation resources of non-refundable character.

Article 33 of Decree 111 of 1996.

The Organic Statute of the Budget (art. 33) qualifies international assistance or cooperation resources as capital, in harmony with article 31 of the same statute, making them part of the “revenue budget” corresponding to the General Budget of the Nation and anticipating its incorporation by decree of the Government, in the case of international assistance or non-refundable cooperation resources.

These donations are those that are incorporated by decree of the Government, prior certification of their collection issued by the receiving body.

The Article 33 of decree 111 regulates the incorporation of means casual to the budget through an act of the Government, to which the same constitutional jurisprudence recognizes the powers that the Political Charter grants in the execution of the budget. In addition, the administrative acts through which exercises said functions conferred by the organic law are subject to the regime of the administrative function and jurisdictional control, in addition to the prosecutor in charge of the Comptroller General of the Republic and the

100 Speaker: Director Roberto Suárez Franco,Consultation 814, April 29, 1996.

political control due to the information that the Ministry of Finance and Public Credit must render to the economic commissions of the Congress.

The legislator provides that such assistance resources must be executed "in accordance with the provisions of the international conventions or agreements that originate them", establishing, as is the case with parafiscal resources in article 29 of the same statute, an exception with the force of organic norm, to the application of the ordinary budget provisions. The Chamber understands that the legislator can, through the organic law, also establish the special budgetary regime applicable to said regulations, which is equivalent to affirming that the Constitution does not establish that all incorporations must be made through the law, but rather that the organic law could establish that the modification of the budget by incorporating international assistance resources, which are exceptional and subject to international agreements, as effectively established, a procedure also exceptional by decision of the Government.

In addition, the normative reference of the organic law to the international legal order implies respect for the international commitments of the country with members of the international community, whether they are states or entities of international law.

Consequently, for the specific case under analysis, if the organic statute of the budget provides for the incorporation of capital donations by decree as a function of the Government, the foregoing means that Congress does not have to order by ordinary law the incorporation of capital items donation from international assistance resources, because the first provides mechanism for this budget incorporation through administrative action by the Government.

In conclusion, there is a current legal regime according to which the resources of donations from non-reimbursable international assistance or cooperation are incorporated into the national budget as "capital resources", by administrative act of the executive power, consisting of a decree issued by the National Government, according to the organic statute of the budget (art. 33, Decree 111/96); therefore, it is not necessary to modify the budget in this matter, with the issuance of a law.

The incorporation of international cooperation resources by decree proceeds as long as they are in the treasury of the respective entity, which is not a common occurrence, because the donors make the disbursements generally under the modality of advances or revolving funds and to the extent of the needs of the flow of resources of the projects, which would imply having to issue a decree for each one of the disbursements and paralyze the execution of the projects until they are counted in the treasury.

This procedure, by not adjusting to the disbursement processes of non-reimbursable international cooperation projects, has been of limited use by public entities.

To the above, it is added that this modality of incorporation of resources to the General Budget of the Nation implies the issuance of a decree of addition of the same and another of liquidation, having to carry out a double administrative activity.

9.5.4. THE BUDGETARY QUOTA OF THE PRESIDENTIAL AGENCY FOR SOCIAL ACTION AND INTERNATIONAL COOPERATION

SOCIAL ACTION through its investment projects, by having appropriation available within its budget, can support public entities that require incorporating the resources of a donation into their budget.

Under this modality, the incorporation of the resources to the budget of the entities is achieved, through the transfer or assignment of appropriation of SOCIAL ACTION to the interested public entity, having two alternative procedures, reiterated in the annual budget law of the last validity:

9.5.4.1. Distribution

For the validity of 2008, established in article 19 of Law 1169 of 2007, by which the Budget of Income and Capital Resources and Law of Appropriations[101].

Through this procedure, SOCIAL ACTION can distribute or assign part of its appropriation to the entity that needs to start the execution of a non-reimbursable cooperation project within a certain term.

Requires compliance with the following:

a) Request to SOCIAL ACTION, with the technical and economic justification of the distribution, indicating the amount requested, accompanied by:

- Data sheet update if the project is already registered in previous validity before the BPIN of SOCIAL ACTION.

- If the project is new, that is, it is not registered in the BPIN of SOCIAL ACTION, accompany the files of the Adjusted General Methodology - MGA of the DNP (including the transmission file) on magnetic media. In the MGA Format EV-27, the project must be budget classified: Specific Type of Expenditure 0540 and Sector 1000. In the Format PR-02, Sources of Financing – Investment Stage, it must be selected as Entity, to the requesting Entity and in Type of Resource, technical cooperation.

b) SOCIAL ACTION includes the project or updates it in SOCIAL ACTION's BPIN and sends it for initial feasibility to the Administrative Department of the Presidency of the Republic - Planning Office, who sends it to the National Planning Department, DNP.

c) Concept of the Directorate of Investments and Public Finances of the DNP.

d) Issuance of Agreement by the Board of Directors of SOCIAL ACTION, which must be approved by the National Budget Directorate of the Ministry of Treasury and Public Credit.

e) Adjustment of the investment budget of the Beneficiary entity of the donation by the Ministry of Finance and Public Credit.

101 Article 19: See Normative Annex.

9.5.4.2. Inter-administrative Agreement

This modality of incorporating resources into the budget of a public entity is contemplated in article 26 of Law 1169 of 2007[102]. It is applied in the events in which the receiving entity of the cooperation resources must deliver them to another under an inter-administrative agreement, for its execution.

With this procedure SOCIAL ACTION or the receiving public entity transfers the resources of the donation to the beneficiary public entity through an inter-administrative agreement, which bears the commitment of the public entity to incorporate the same to their budget.

This process involves:

a) Celebration of an Inter-administrative Agreement between SOCIAL ACTION or the receiving public entity and the public entity executing the donation.

b) The executing entity must register the project or modify the date in the BPIN, to reflect the amount to incorporate.

c) The executing entity must request to the DNP-Directorate of Investments and Public Finances, favorable concept to incorporate these resources.

d) Issuance by the executing entity of the administrative act of incorporation of the resources.

e) Approval of the same by the Ministry of Finance and Public Credit - General Directorate of the National Public Budget.

9.6. THE ORGANIC STATUTE OF THE BUDGET AND TERRITORIAL ENTITIES

The Organic Statute of the Budget establishes in its Title XV, for territorial entities:

Article 104. No later than December 31, 1996, the territorial entities will adjust the rules on programming, preparation, approval and execution of their budgets to the rules provided for in the organic law of the budget (Ley225 of 1995, art. 32).

Article 107. The programming, preparation, elaboration, presentation, approval, modification and execution of the appropriations of the District and Municipal Comptrollerships and Ombudsmen will be governed by the provisions contained in the organic norms of the budget of the Districts and Municipalities that are dictated by in accordance with the Organic Law of the Budget or of the latter in the absence of the first (Law 225 of 1995, art. 29).

Article 109. When issuing the organic budget regulations, the territorial entities must follow the provisions of the Organic Law of the Budget, adapting them to the organization, constitutional norms

102 Article 26. See Regulatory Annex.

and conditions of each territorial entity. While these regulations are being issued, the Organic Law of the Budget will be applied as it is pertinent. (Bold is ours).

Taking into account the above, the stated in the previous sections, it is also applicable to the territorial entities, who, when issuing their budget regulations in development of article 109, must equally contemplate the procedures of incorporation by decree, distribution and assignment of the budget quota. As happens with SOCIAL ACTION at the national level, at the territorial level the sufficient appropriation quota to receive and/or execute or distribute the budget appropriation to the other entities could be assigned to the governor's office or the respective mayor's office or the Government Secretariat.

9.7. CHANNELING OF COOPERATION RESOURCES BY PUBLIC ENTITIES. WILL OF THE DONOR[103]

The Ministry of Finance and Public Credit has expressed its opinion regarding the feasibility of the Colombian Agency for International Cooperation, today SOCIAL ACTION, executing resources, with the possibility that the final benefits will be private industrial, in accordance with the will of the World Bank in its capacity as a donor and that the moneys assigned to the ACCI by the World Bank for the administration of project resources be added to the budget of the same, as well as their interests and the exchange rate differential.

We review this concept, to the extent that it is applicable to other public entities, when in order to fulfill their functions, they must channel resources of non-reimbursable cooperation to third parties, including private ones.

> "It should be noted at this point that the transcribed rule contemplates the possibility that, in the case of private entities, international cooperation is oriented in one direction, that is to say, as the recipient of said cooperation and not as the grantor of it.
>
> The above obeys the content of the Article 355 of the Constitution, that prohibits the branches or bodies of public power decree aid or donations in favor of natural or legal persons of private law, a situation that does not occur in the case of this study, since the resources that the Agency would execute, despite being incorporated in its budget and have a private entity as their destination, they obey the will of the cooperator and their expense is not decreed by the ACCI, which acts only as a channel for them.
>
> Now, as was stated, the treatment of the type of cooperation under study, that is to say, international non-reimbursable, will have to be incorporated into the General Budget of the Nation as a donation, as a prerequisite for its execution by an entity that makes part of it, in accordance with the provisions of article 345 of the Political Constitution, according to which no disbursement may be made from the Treasury that is not contemplated in the expense budget.

103 Concept No. 5219. Ministry of Finance and Public Credit. General Directorate of the National Budget.Bogota, October 16, 1998.

By virtue of the foregoing, this Directorate considers that the mission that has been attributed by the legislator to The Agency, as a channeling body for international cooperation destined for private sector entities, is consistent with the will of the cooperator, in the sense of guiding the execution of resources through the ACCI.

Finally, with regard to the yields produced by the resources of the cooperation, as well as their exchange differential, it should be taken into account that the cooperator can also dispose of these, because they are the result of the operations carried out with charge to the resources delivered by it; reason for which, they must respond to their will in the terms of the stipulations of the agreement, being pertinent to point out that, in any case, so that the ACCI can dispose of such resources, it is obliged to carry out the prior incorporation of the same to its budget, a situation that would also apply to the resources recognized for administration, as long as they can be legally received by that entity.

Chapter 10

Credits

concessions[104]

It is a form of international cooperation, which has the characteristic of being reimbursable. It is a special type of credit, that has at least a 35% subsidy at the moment of approval of the loan, using the reference commercial interest rate (TICR) as the discount rate.

Based on the foregoing, it is possible to point out that concessional credits are modalities of financing and executing cooperation policies for the development, whose basic characteristics are:

- They are constituted from Government to Government.
- They are also known as complementary economic credits or linked.
- They are aimed at promoting the social and economic development of the countries of the so-called Third World or that face problems of economic and social crisis.
- They are part of cooperation economic and financial programs.
- They have two basic components: one for aid and cooperation and the other for negotiation, as they are instruments to promote the exports of the granting country.
- They are soft and long-term loans.

In relation to the possibility of entering into bilateral concession contracts, that is, entered into not with multilateral credit organizations, but from government to government, in which the granting of credit is conditioned on the purchase of goods and services in the granting country of credit, the Council of State has stated that in essence, such contracts grant credits for the acquisition of goods from the country of origin and have a financing function for that acquisition and that state entities are authorized by article 13 of Law 80 of 1993 to enter into loan or credit contracts without submitting to the formalities indicated in the same law and, in addition, to accept, eventually,

104 Concept of the Consultation Room and Civil Serviceof the Council of State, on January 29, 2004. Counselor Speaker: Flavio Augusto Rodríguez Arce.

conditions of the credits that impose the obligation to buy goods and services of specific foreign origin.

In these credits, the Government receiving the resources must seek to achieve the most favorable conditions of competitiveness to obtain the respective credit and thus determine the convenience and timeliness of the intended operation.

However, the Chamber highlighted the need that, as in any modality contracted loan, it is the duty of the respective authority to analyze the conditions or requirements in great detail, because although it may be that apparently the credit is granted in advantageous conditions, it may well happen that in the obligation to buy certain goods and services, the price at which such goods and services must be acquired is outside the price of the general international market, or the goods do not respond to the best technologies. All of them are factors that must be expressly assessed in order to determine the real convenience of contracting the conditional loan.

For the rest, the Court considered it appropriate to draw attention to this type of negotiations, because although the result of the objective balance between the cost of credit and the price of goods and services may be economically favorable, in this way the national industry of goods and services could be seriously affected, generating, in addition, a serious internal social effect of great proportions, since It would sever the momentum of the economy that has been carried out for some time through internal purchases. In this way, it is clear that a method or system of promoting and supporting the industry of other countries or of the most developed by their respective governments is precisely that of granting them subsidies through the concession of conditional soft loans to purchasing countries, which could affect the national economy.

In this order of ideas, it is important that since the stage of negotiation of these instruments, which are the source of the credit contracts that are subsequently signed, a special duty of diligence is observed that becomes important even in the case of concessional credits, because although it's true that these are linked to the purchase of goods or services from the lending country, this does not prevent the Government from establishing a scheme for assessing the risks inherent to this type of business in the face of changing market conditions and, if applicable, establishing safeguard clauses or reservations in the agreements and in the respective contracts that protect the interests of Colombia in the long term, ultimately avoiding putting in question the fulfillment of the obligations acquired by the country at the international level.

Chapter 11

exemption

taxes and International Cooperation

11.1. EXEMPTIONS ARE LEGALLY CREATED

In accordance with our Political Constitution, the power to establish and therefore to eliminate taxes belongs to the legislative branch, which is why any new tax or modifications to existing ones require an approved law that establishes them.

In this way, neither the government nor public entities can create or establish taxes or contributions, nor exemptions to them; all these matters are of exclusive competence of the Congress of the Republic.

In this sense, our Political Constitution establishes:

“Article 150. It is up to Congress to make the laws. Through them it exercises the following functions:

1. Interpret, reform and repeal the laws.

12. Establish fiscal contributions and, exceptionally, parafiscal contributions in the cases and under the conditions established by law.

16. Approve or disapprove the treaties that the Government celebrates with other States or with international law entities. By means of said treaties, the State may, on the basis of equity, reciprocity and national convenience, partially transfer certain powers to international organizations, whose purpose is to promote or consolidate economic integration with other States.

Article 154. Laws may originate in any of the Chambers at the proposal of their respective members, of the National Government, of the entities indicated in article 156, or by popular initiative in the cases provided for in the Constitution. However, only the laws referred to in numerals 3, 7, 9, 11 and 22 and literals a, b and e, of numeral 19 of article 150 may be enacted or reformed at the initiative of the Government; those that order participation in national income or transfers thereof; those that authorize State contributions or subscriptions to industrial or commercial companies and those that decree tax exemptions, national contributions or fees.

Article 338. In times of peace, only the Congress, the departmental assemblies and the district and municipal councils may impose fiscal or parafiscal contributions. The law, the ordinances and the agreements must establish, directly, the active and passive subjects, the facts and the taxable bases, and the tax rates".

11.2. GENERAL RULES

In general, tax exemptions on international cooperation:

1. They have their origin in international law or treaty.
2. They are restrictive. They apply to the person, act, activity or contract for which they were established. Any provision that contains exceptive treatments in terms of tax benefits is restrictive in nature, and consequently, cannot be extended to situations or persons not foreseen as beneficiaries thereof. Consequently, the provisions of the framework agreement or the law must be strictly adhered to.
3. They cannot be accessed by analogy.
4. They are not retroactive. They operate from the moment in which all the requirements demanded in the law, the regulation or in the framework agreement are fulfilled, international agreement or treaty.

11.3. THE TAX EXEMPTIONS CONTAINED IN THE TREATIES

Without prejudice to what has just been stated, in relation to the tax exemptions provided for in treaties, framework agreements or international conventions:

1. Those that are expressly enshrined in them are applied.
2. The procedure and requirements to access them are those established in the respective agreement and those established in the Tax Statute and in the Customs Regime and the provisions dictated by the Tax Directorate and National Customs - DIAN.
3. Tax exemptions provided for in treaties and international agreements celebrated by the Colombian government and ratified by law by the Congress of the Republic, prevail over the national provisions that contemplate the different taxes. Therefore, it should be taken into account if the international treaty or agreement provides for exemptions.
4. They are not exclusive with those enshrined in Law 788 of 2002 and regulated in Decree 540 of 2004.
5. If it is not about resources intended for programs, projects or activities of international cooperation, the diplomatic exemption applies, with respect to VAT, in the terms established in the respective agreement and in Decree 2148 of 1991 and Decree 2740 of1993[105].

105 Diplomatic and Consular Missions, International Organizations and Cooperation and Technical Assistance Missions are exempt from sales tax in Colombia in accordance with the provisions of treaties, Agreements, Conventions or current international agreements that have been incorporated into domestic legislation, and the lack of these based on the strictest international reciprocity. Article 1 Decree 2740 of 2003.

11.4. THE TAX EXEMPTIONS CONTAINED IN THE NATIONAL LEGISLATION FOR INTERNATIONAL COOPERATION

In relation to the exemptions enshrined in Law 788 of 2002 and regulated in Decree 540 of 2004:

1. They fall on any tax, rate or contribution of the national order.
2. They are applied in relation to funds, investments, financial transactions, expenses, assets, contracts, imports and/or acquisition of goods or services,.
3. They operate directly. It is not necessary to pay the tax and request its return later.
4. These must be projects agreed upon with the Colombian government under the intergovernmental agreements.
5. These must be resources intended to carry out programs considered to be of common use. It is up to each public entity in the sector, whether at the national or territorial level, to certify whether the projects and investments to which the corresponding aid or donations are intended are of common use. Said certifications must be sent immediately to the executing entity of the resources, which in turn will send them within the first five (5) business days of each quarter to the Tax Directorate and National Customs, DIAN, for matters of its competence[106].
6. The exemption from Sales Tax (VAT) with respect to the resources referred to in article 96 of Law 788 of 2002 proceeds directly on the operations of acquisition of goods or services taxed with this tax that the administrator or executor of the resources carries out directly or through contracts for the realization of programs of common utility, with the fulfillment of the requirements indicated in article 4 of Decree 540 of 2004.
7. The exemption from the Levy on Financial Movements (GMF) operates directly with respect to the disposition of the resources of the account opened exclusively for the management of the same. For this purpose, the administrator or executor must mark in the financial institution the account that will be used for sole management of resources.
8. They are not applied for expenses covered by the diplomatic franchise.
9. The aspects not contemplated in Decree 540 of 2004 are governed by the general rules contained in the Tax Statute and the corresponding regulations.

107 In relation to the term to send the certificationrequired in the paragraph of article 2. of the Decree 540 of 2004, the Division of Tax Regulations and Doctrine of the DIAN, through concept 048594, of August 5, 2004, stated that it is evident that if the exemption referred to in article 2 Ibidem, operates to the extent that the aid or donations are intended for programs of common use, according to the certification issued by each public entity in the sector -national or territorial- it cannot be inferred that the certification must be prior to and not subsequent to the execution of the resources, and must therefore be sent by the executing entity to the DIAN within the first five (5) business days of each quarter, then with respect to the January, February, and March quarters, the information will be sent no later than the fifth (5) business day of April 2004

11.5. GENERAL REQUIREMENTS FOR THE EXEMPTION ADDRESSED BY ARTICLE 96 OF LAW 788 OF 2002

1. For the origin of the exemption established in article 96 of the Law 788 of 2002, the donor may execute the resources:

   a) managing them directly;

   b) administering them through international agencies;

   c) administering them through duly authorized public entities.

   d) Designating non-governmental organizations duly accredited in Colombia as executing entities of the donated funds.

2. In each case, the following general requirements must be met:

   a) In the case of the Non-Governmental Organization that is designated to administer and execute the resources, its legal representative must attach a certification issued by the Government or foreign entity granting the cooperation in which its capacity as executing entity of the donated funds is stated, having to keep accounts separate from the managed resources.

   b) The legal representative of the entity that manages or executes the resources must issue a certification regarding each contract or operation carried out with the resources of the aid or donation, stating the name of the agreement, agreement or intergovernmental action that covers the aid or donation, indicating the date thereof and the parties involved. This certification will serve as support for exemption from the national stamp duty ,tax on sales, the Levy on Financial Movements (GMF) and other rates and contributions of the national order that may fall on the use of resources, certification that must be signed by the Statutory Auditor or Public Accountant, as the case may be. The administrator or executor of the resources must deliver said certification to the suppliers of goods and services, in order to apply the corresponding VAT exemption.

   c) The administrator or executor of the resources must manage the aid or donation funds in an account opened in a financial entity, exclusively destined for that purpose, which will be canceled once the total execution of the funds as well as of the project or work beneficiary of the aid or donation is completed.

   d) The supplier, for his part, must leave this record in the invoices he issues and keep the certification received as support for his operations, for when the Administration requires it, which also authorizes him to deal with the deductible taxes to which he is entitled in accordance with articles 485 and 490 of the Tax Statute, although without the right to request a refund of the balance in favor that is reached in some bimonthly period.

11.6. THE TAX EXEMPTIONS ARE OF THE NATIONAL ORDER

It should be added that these are exemptions from rates, taxes and contributions of the national order, since in relation to the issue of taxes and exemptions of the territorial order, the entities of this order enjoy full autonomy.

In relation to the autonomy of the territorial entities and the power to establish the taxes and exemptions of the territorial order, the State Council has pronounced in the sense that "Article 294 of the Political Constitution expresses:

The Law may not grant exemptions or preferential treatment in relation to property taxes of territorial entities. Nor can you impose surcharges on their taxes, except as provided in article 317".

With the transcribed provision, the constituent clearly prohibited the legislator from granting exemptions in relation to territorial taxes, in order to protect the heritage that may be affected by decisions adopted at the national level. This means that the territorial entities are autonomous in this matter.

Now, if the legislator is not allowed to enshrine tax exemptions of a territorial nature, even less so can a national entity of administrative enforcement.

> "... It is therefore up to the municipal councils to directly determine the taxable bases of their property taxes, by provision of article 338 of the Political Constitution. It does not have the communication of the entity oversight of the financial system legal weight to force the Municipality to accept exemptions that are not established by the entity constitutionally empowered to regulate matters related to essential elements of taxes, which is the Council...[107]".

11.7. IMPORTS AND DIPLOMAT FRANCHISE[108]

It is important to state that the Protocol Directorate of the Ministry of Foreign Affairs intervenes in the VAT refund if it is related to the diplomatic franchise, established in Decree 2148 of 1991, which is limited to the admission of goods that are going to be destined for the consumption or restricted use of the Diplomatic Mission or for the consumption or personal and family use of the accredited members of a Mission who have the right to it.

Said franchise is not applicable for the importation of goods destined for Colombian public entities, in the development of cooperation projects and that are going to be used by people other than officials.

107 State Council Ruling, Fourth Section. Bogotá, DC, June 29, 2006, Counselor speaker: Juan Ángel Palacio Hincapié, File number: 05001- 23-31-000-1999-01189-01, Internal Number: 15423. Plaintiff: AV Villas Housing and Savings Corporation C/ Municipality of Medellín.

108 Customs Statute.

Article 135. Import duty free.

It is that importation that, by virtue of a Treaty, Agreement or Law, enjoys total or partial exemption from customs taxes and on the basis of which the merchandise remains in a restricted provision, except as provided in the rule that establishes the benefit.

Article 136. Change of owner or destination.

The customs authority may authorize the alienation of imported merchandise with franchise, to persons who have the right to enjoy the same exemption, or the assignment to a purpose by virtue of which they also have the same right, without the payment of customs taxes being required in any of these events. The merchandise in any case will remain with restricted disposal.

Article 137. Termination of the modality.

When it is intended to leave the merchandise freely available, prior to the change of destination or disposal, the importer or the future purchaser must modify the Import Declaration, paying the exempted customs taxes, settled on the customs value of the merchandise, determined in accordance with to the rules that govern the matter and taking into account the rates and the exchange rate in force at the time of presentation and acceptance of the modification. This change of owner or destination will not require Customs authorization.

beneficiary foreigners referred to in article 3 of the afore mentioned decree, nor the headquarters of the beneficiary missions, in the terms referred to in article 5th of it.

In this sense, the Directorate of Protocol of the Ministry of Foreign Affairs does not authorize requests of admission with diplomatic exemption of goods or merchandise whose use or consumption is not proper to the diplomatic function or that are unrelated to the normal tasks of the mission.

The above criterion has been exposed to the Diplomatic Missions and International Organizations by the Directorate of Protocol through Note DPR.CPV 32773 of September 5, 2002, as well as by the Division of Customs Regulations and Doctrine of the DIAN through concept No. 036852 of the June 20, 2002, documents annexes.

11.8. IMPORTS DESTINED TO PUBLIC ENTITIES IN DEVELOPMENT OF COOPERATION PROJECTS. ORDINARY FRANCHISE

The ordinary franchise is one that proceeds in development of the existing International Agreement between the States.

The merchandise remains in restricted disposition, that is, the owner of the domain right cannot be changed, without meeting certain requirements.

In this case, the provisions of Decree 255 of 1992 are applicable, regarding the exemption by tariff and articles 424 and 480 of the Tax Statute (article 32 of Law 633 of 2000[109]) for VAT.

11.9. PAYMENT OF STAMP TAX ON CONTRACTS CELEBRATED WITH INTERNATIONAL COOPERATION RESOURCES

In accordance with article 519 of the Tax Statute, the stamp duty is a lien that is generated by the granting or acceptance in the country of public instruments and private documents. In the case of the exemptions established for this tax, they may be granted in favor of the grantors or subscribers of the documents or on the document itself.

This is how article 352 establishes:

"When exempt entities and non-exempt persons intervene in an action or in a document, the latter must pay half of the stamp duty, except when the exception is due to the nature of the act or document and not to the quality of its grantors. (Bold outside text).

In the case of resources from the European Community, by virtue of Law 825 of 2003, which approves the Framework Convention onto the execution of financial and technical assistance and economic cooperation

109 This article, by modifying 480 of the Tax Statute, excludes from sales tax the importation of goods and equipment in the development of conventions, treaties, international and inter-institutional agreements or cooperation projects, donated in favor of the National Government or public law entities of the national order.

under the ALA Regulation, signed in Brussels in the year 2000, numeral 3.1. of the Fiscal Protocol establishes that the contracts will not be subject to the payment of stamp duty or registration. Therefore, it is to be understood that the contracts signed for the execution of the financial and technical assistance granted to the Republic of Colombia in development of the afore mentioned agreement are exempt from the stamp tax[110].

For other events, in which the treaty with the respective cooperant does not provide for the above, the exemptions from rates, taxes and contributions of the national order referred to in article 96 of Law 788 of 2002 may in no way be extended to third parties who receive money as consideration for the services provided or for the sale of goods. Therefore, in the development of the afore mentioned conventions or agreements, for those who independently, the values received constitute a deposit capable of producing income, such payments or credits in account are taxed under this tax and, therefore, the withholding at source[111] must be applied.

11.10. TAX BENEFITS, FRAMEWORK AGREEMENTS AND DONATION AGREEMENTS[112]

Any provision that contains exceptive treatment in terms of tax benefits is restrictive in nature and, consequently, cannot be extended to situations or persons not foreseen as beneficiaries thereof. Consequently, the provisions of the Framework Agreement must be strictly adhered to.

In any case, it is important to bear in mind that for the current tax exemptions to operate by virtue of the General Agreement in force, the text of the Draft Donation Agreement must be subject to the strict conditions of the former and, furthermore, it must be noted that, in virtue of International Agreements that contain tax benefits, third parties who are the object of the international agreement cannot benefit, with respect to which the budgets are configured legal constitutive income of profit.

11.11. WITHOLDING AT THE SOURCE. TECHNICAL COOPERATION AGREEMENTS

About withholding at source on resources that are delivered as a contribution by a public fund in compliance with a technical cooperation agreement, The Directorate of National Taxes and Customs – DIAN has ruled113 in the
sense that the delivery of resources in kind or in money that corresponds to contributions for the development of an agreement is not found subject to withholding at source.

The foregoing, based on the fact that withholding at the source constitutes a mechanism for collecting the tax, and for it to be appropriate, the conditions that give rise to the tax are required to be presented, especially those related to the generating event and taxable person, which in the case of income tax will correspond to the realization of a tax income

110 Concept 032564 of May 31, 2005, of the Tax Regulations and Doctrine Division of the DIAN.

111 Concept 076346 of November 8, 2004 of the Tax Regulations and Doctrine Division of the DIAN.

112 Directorate of National Taxes and Customs "DIAN". Concept No. 55001-0. Bogota, August 27, 1999.

113 Concept: 121922. December 18, 2000. Tax Regulations and Doctrine Division.

by a natural or legal person taxpayer on the rent.

In accordance with the foregoing, Article 5 of Decree 1512 of 1985 establishes withholding at source for all payments or deposits into account, likely to constitute tax income for the recipient, made by legal persons and companies, for concepts not subject to a special rate.

Now, when two or more people are committed to the development of an activity or to obtain a purpose, the contribution made by one of them in order to provide the necessary resources required to achieve the purpose or the development of the activity does not constitute tax income for the associate who receives it to the extent that it does not correspond to the payment of a service, but for its administration, and that to that extent are not likely to be capitalized. In the same sense, the costs of the agreement that are charged to the resources provided may not give rise to tax deductions by the person who administers them.

The nature of said resources, as well as their use, must be duly distinguished in the accounting of the administrator of the resources and executor of the agreement.

On the other hand, payments made in execution of the activity as consideration for the acquisition of goods or provision of services will be subject to withholding at source if the law has not qualified the beneficiary as a non-payer of income tax or income as exempt or non-constitutive income or occasional profit.

Likewise, if part of the resources provided is intended to remunerate the executor of the agreement in such condition, there will be a place to withhold at source on the remuneration.

11.12. STAMP TAX EXEMPTION BY INTERNATIONAL ORGANIZATIONS AND PUBLIC ENTITIES[114]

The tax exemptions provided for in international treaties and agreements entered into by the Colombian government and ratified by law by the Congress of the Republic prevail over the national provisions that contemplate the different taxes. Therefore, it should be taken into account if the international treaty or agreement provides for exemptions, as in the consulting case, of stamp duty.

In relation to official entities that are exempt from stamp duty, Concept 085798 of November 5, 1998 states that in accordance with article 532 of the Tax Statute: “Public law entities are exempt from paying national stamp duty"; in turn, article 533 states: “The Nation, the Departments, the Municipal Districts and the organisms or dependencies of the Branches of the Public Power, Central or Sectional, with the exception of the industrial and commercial companies of the State and of the companies of mixed economy”.

114 Concept 099006. October 9, 2000. Regulatory Division and Tax Doctrine.
Concept 069040 of July 29, 1999. Legal Office.

11.13. INFORMATION THAT MUST BE SUPPLIED BY PUBLIC OR PRIVATE ENTITIES THAT ENTER INTO COOPERATION AGREEMENTS

Article 58 of Law 863 of 2003 established that in order to ensure the collection of income and complementary taxes, VAT and compliance with the other obligations that derive from the execution of contracts for the sale of goods or the provision of taxed services, public or private entities that enter into cooperation and technical assistance agreements for the support and execution of their programs or projects with international organizations must send to the DIAN a monthly list of all current contracts charged to these agreements detailing the payments or credits in account that are made in the period.

This norm was regulated by Decree 4660 of November 29, 2007[115], in the sense that said entities must send to the Sub-directorate of Tax Control of the Directorate of National Taxes and Customs, DIAN, no later than the last business day of the month following the reporting period, a monthly list of all contracts in force under these agreements containing:

1. Identification of agreements in execution.
2. List of the contracts that are celebrated in development of each one of the agreements, indicating the total value and the term of execution of each one.
3. Monthly list of payments made under the contracts, discriminating:

a) Name, NIT and address of the beneficiary of the payment;

b) Payment concept;

c) Payment value;

d) Amount of withholdings at the source made by way of taxes administered by the Directorate of National Taxes and Customs, DIAN.

e) Value of the tax on discountable sales corresponding to the period that is reported

For the purposes of applying the provisions of the previous decree, the Legal Advisory Office of the Ministry of Foreign Affairs defined the term *international* agencies, in the following sense[116]:

The terms *international* organisms and international organizations are usually used as synonyms for purposes of their qualification as international public law entities,
created and composed of States; but *international* organisms is also used to refer to specialized agencies, of an intergovernmental nature, linked to international organizations (v. gr. the International Atomic Energy Agency, linked to the United Nations Organization).

115 The Directorate of National Taxes and Customs, through Resolution 0288 of January 11, 2008, indicated the formats and technical specifications of the magnetic medium for the presentation of this information.

116 Concept OAJ.CAT. No. 46373, dated August 31, 2004, of the Legal Advisory Office of the Ministry of Foreign Affairs.

An acceptable definition of international organization would then be: an organization composed of two or more States, created by means of an international treaty, as an instrument of cooperation in a given field. Therefore, taking into account what was explained above, an international organization could be defined in the same way or understood as an organization made up of States, linked to an international organization.

In this concept, the exclusion of non-governmental organizations *of the definition of international organizations* is highlighted.

Chapter 12

Others

Legal aspects of importance related to International Cooperation

12.1. THE OFFICIAL PERFORMANCE DOCUMENTS MUST BE WRITTEN IN SPANISH LANGUAGE

There has not been sufficient clarity about the language in which official documents on International Cooperation must be written, which is why some donors still require documents to be signed in English.

However, official action documents in Colombia must be in the Spanish language.

The Political Constitution in its article 10 establishes: “The Castilian is the official Colombian language…”.

The 2nd Law of 1960 "By which measures are dictated for the defense of the native language" specifically regulated this matter and determined: "The documents of official action, and all names, signs, notices of business, profession or industry, and of arts, fashions or sports within common reach, will be said and they will write in Spanish language, except for those that constitute proper names or foreign industrial names they are neither translatable nor conveniently variable…”.

For the interpretation of the transcribed regulations, it must be taken into account that they have not been repealed; therefore, they are mandatory for public servants who sign official documents. In addition, they do not contemplate exceptions, consequently they are of general application.

12.2. REGISTRATION OF LEGAL FOREIGN PEOPLE OF PRIVATE LAW WITH ADDRESSED ABROAD THAT ESTABLISH PERMANENT BUSINESSES IN COLOMBIA

The registration of non-governmental organizations is not new in our legislation.

In accordance with the provisions of Decrees 1890 of 1999 and 200 of 2003 and in article 48 of the Code of Civil Procedure, the General Secretariat of the Ministry of the Interior and Justice was assigned the function of "Registering foreign legal persons of private law domiciled abroad that establish permanent business in Colombia"[117].

Considering it to be of special interest to private international cooperators or international entities that come to the country as executors of cooperation projects, we will briefly describe this procedure.

The interested party must provide:

1. Copy of the Act of Constitution of the Entity duly registered before the competent authority of the country of origin.

2. Copy of the Minutes of the General Assembly of the Entity in which it is stated who are the members of the Board of Directors and the Legal Representative of the same.

3. Copy of the Statutes of the Entity in which the name of the company, address, duration and name of its representatives must be legally established.

4. Original of the general power of attorney that is granted both to the Legal representative for Colombia, as the proxy.

The above documents must be notarized before a public notary in the entity where the respective branch is to be established. Once the Public Deed has been obtained, an official letter must be prepared addressed to the Secretary General of the Ministry of the Interior and Justice, in which the registration of the Entity is requested and of its Legal Representative.

The documentation must bear the apostille seal, according to the Hague Convention, to which the Colombian Government adhered on January 31, 2001; this seal will be placed by the respective authority of the country where the headquarters of the Entity reside.

If the requested documentation is in a language other than ours, it must be translated into Spanish and its translation must be legalized before the Colombian Ministry of Foreign Affairs.

The Legal Representative for Colombia must appoint a proxy with the capacity to represent him judicially.

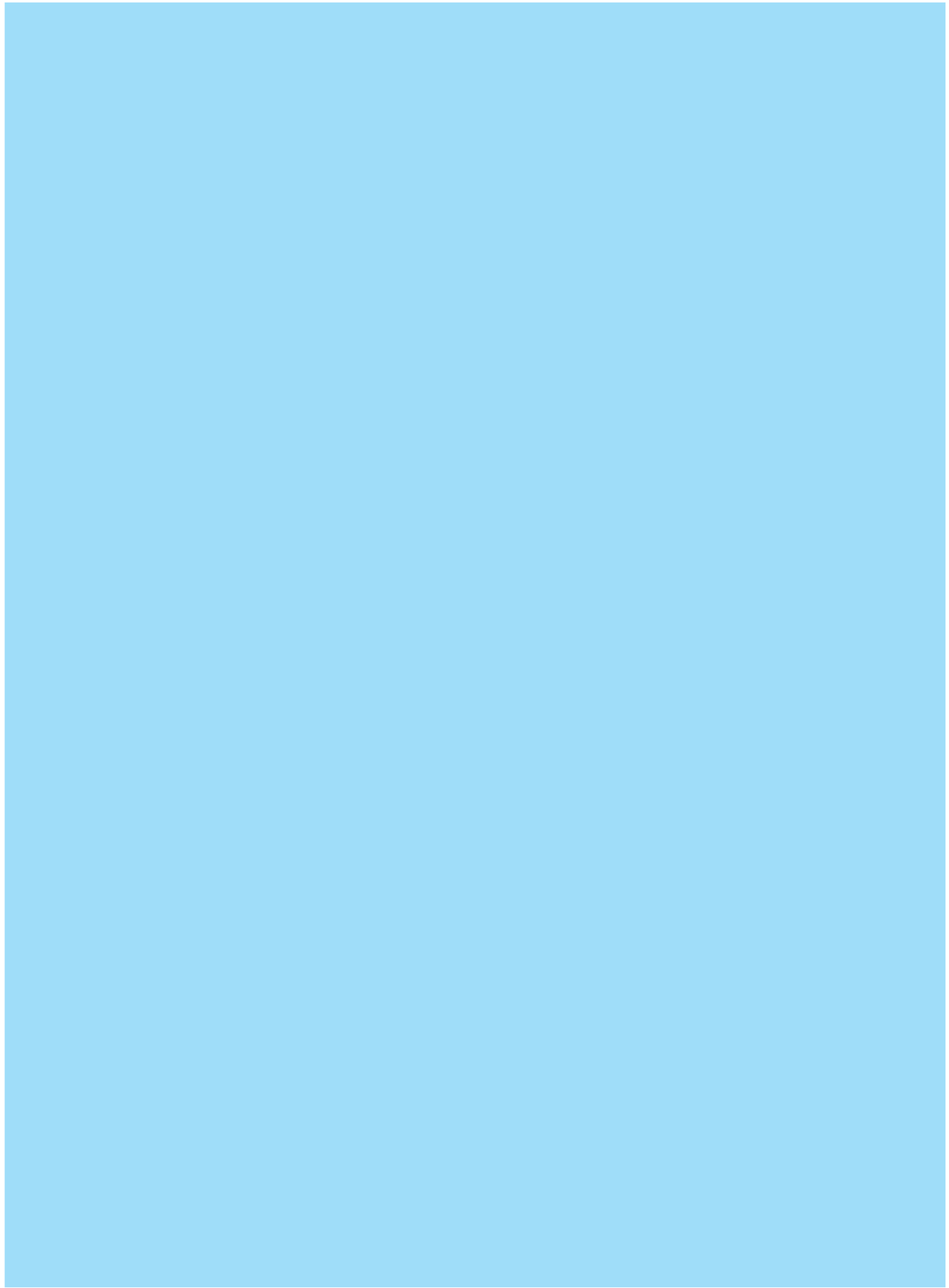
Once the previous procedure has been completed, the Ministry will issue an administrative act of registration and recognition of legal status.

117 Article 8 Number 12.

Normative Supplement

NORMATIVE SUPPLEMENT

SUPLEMENTO NORMATIVO



Rules
Basic

Political Constitution of Colombia

Article 1. Colombia is a social State of law, organized in the form of a unitary, decentralized republic, with autonomy of its territorial entities, democratic, participatory and pluralistic, founded on respect for human dignity, on the work and solidarity of the people who make it up and in the prevalence of general interest.

Article 2. The essential purposes of the State are: To serve the community, promote general prosperity and guarantee the effectiveness of the principles, rights and duties enshrined in the Constitution; facilitate the participation of all in the decisions that affect them and in the economic, political, administrative and cultural life of the nation; defend national independence, maintain territorial integrity and ensure the peaceful coexistence and the validity of a just order.

The authorities of the Republic are instituted to protect all persons residing in Colombia, in their life, honor, property, beliefs and other rights and freedoms, and to ensure compliance with the social duties of the State and of individuals.

Article 3. Sovereignty resides exclusively in the people, from whom public power emanates. The people exercise it directly or through their representatives, in the terms established by the Constitution.

Article 4. The Constitution is a rule of rules. In any case of incompatibility between the Constitution and the law or other legal norm, the constitutional provisions will be applied.

It is the duty of nationals and foreigners in Colombia to abide by the Constitution and the laws, and respect and obey the authorities.

Article 6. Individuals are only responsible before the authorities for breaking the Constitution and the laws. Public servants are for the same reason and for omission or excess in the exercise of their functions.

Article 9. The foreign relations of the State are based on national sovereignty, on respect for the self-determination of peoples and on the recognition of the principles of international law accepted by Colombia.

Similarly, Colombia's foreign policy will be oriented towards Latin America and the Caribbean integration.

Article 10. Spanish is the official language of Colombia. The languages and dialects of the ethnic groups are also official in their territories. The teaching that is imparted in the communities with their own linguistic traditions will be bilingual.

[...]

Article 62. The destination of inter-vivos or testamentary donations, made in accordance with the law for purposes of social interest, may not be varied or modified by the legislator, unless the object of the donation disappears. In this case, the law will assign the respective assets to a similar purpose.

The government will control the management and investment of

such donations.[...]

Article 93. International treaties and conventions ratified by Congress, which recognize human rights and prohibit their limitation in the states of exception, prevail in the internal order.

The rights and duties enshrined in this Charter, will be interpreted in accordance with ratified international human rights treaties for Colombia.

Of foreigners

Article 100. Foreigners in Colombia will enjoy the same civil rights granted to Colombians. However, the law may, for reasons of public order, subordinate to special conditions or deny the exercise of certain civil rights to foreigners.

Likewise, foreigners will enjoy, in the territory of the Republic, the guarantees granted to nationals, except for the limitations established by the Constitution or the law.

Political rights are reserved for nationals, but the law may grant foreigners residing in Colombia the right to vote in elections or popular consultations of a municipal and district order.

Of the state organization

Article 113. They are branches of public power, the legislative, the executive and the judicial.

In addition to the bodies that comprise them, there are others, autonomous and independent, for the fulfillment of the other functions of the State. The different organs of the State have separate functions but collaborate harmoniously for the realization of its ends.

Article 114. The Congress of the Republic is responsible for amending the Constitution, making laws and exercising political control over the government and administration.

The Congress of the Republic will be made up of the Senate and the House of Representatives.

Article 115. The President of the Republic is head of State, head of government and supreme administrative authority.

The National Government is made up of the President of the Republic, the Ministers of the Office and the Directors of Administrative Departments. The President and the corresponding Minister or Department Director, in each particular business, constitute the government.

Article 129. Public servants may not accept positions, honors, or rewards from foreign governments or international organizations, nor hold contracts with them, without prior government authorization.

Article 150. It is up to Congress to make the laws. Through them it exercises the following functions:

16) Approve or disapprove the treaties that the Government celebrates with other States or with international law entities. Through these treaties the State, on the basis of equity, reciprocity and national convenience, partially transfer certain powers to international organizations, whose purpose is to promote or consolidate economic integration with other States.

From the President of the Republic

Article 188. The President of the Republic symbolizes national unity and by swearing compliance with the Constitution and the laws, he undertakes to guarantee the rights and freedoms of all Colombians.

Article 189. Corresponds to the President of the Republic as head of State, head of the government and supreme administrative authority:

2) Manage international relations. Appoint diplomatic and consular agents, receive the respective agents and enter into treaties or agreements with other States and entities of international law that will be submitted for the approval of Congress.

3) Appoint the presidents, directors or managers of the national public establishments and the people who must perform national jobs whose provision is not by competition or does not correspond to other officials or corporations, according to the Constitution or the law.

In any case, the government has the power to freely appoint and remove its agents.

18) Grant permission to national public employees who request it, to accept, on a temporary basis, positions or grants from foreign governments.

Of the administrative function

Article 209. The administrative function is at the service of general interests and is developed based on the principles of equality, morality, efficiency, economy, speed, impartiality and publicity, through decentralization, delegation and de-concentration of functions.

The administrative authorities must coordinate their actions for the proper fulfillment of the purposes of the State. The Public Administration, in all its orders, will have an internal control that will be exercised in the terms indicated by law.

Article 210. The entities of the national order decentralized by services can only be created by law or by authorization thereof, based on the principles that guide administrative activity.

Individuals may perform administrative functions under the conditions that point out the law.

The law shall establish the legal regime status of decentralized entities and the responsibility of their presidents, directors or managers.

of international relations

Article 224. Treaties, for their validity, must be approved by Congress. However, the President of the Republic may give provisional application to treaties of an economic and commercial nature agreed within the scope of international organizations, which so provide. In this case, as soon as a treaty enters into force provisionally, it must be sent to Congress for approval. If Congress does not approve it, the application of the treaty will be suspended.

Article 225. The Advisory Commission of Foreign Relations, whose composition will be determined by law, it is a consultative body of the President of the Republic.

Article 226. The State will promote the internationalization of political, economic, social and ecological relations on the basis of equity, reciprocity and national convenience.

Article 227. The State will promote economic, social and political integration with the other nations and especially, with the countries of Latin America and the Caribbean through the signing of treaties that, on the basis of fairness, equality and reciprocity, create supranational organizations, even to form a Latin American community of nations. The law may establish direct elections for the constitution of the Andean parliament and the Latin American parliament.

Of the constitutional jurisdiction

Article 241. The Constitutional Court is entrusted with safeguarding the integrity and supremacy of the Constitution, in the strict and precise terms of this article. To this end, it will fulfill the following functions:

10) Decide definitively on the enforceability of international treaties and the laws that approve them. To this end, the government will send them to the Court, within six days following the enactment of the law. Any citizen may intervene to defend or challenge its constitutionality. If the Court declares them constitutional, the Government may carry out the exchange of notes; otherwise they will not be ratified. When one or more norms of a multilateral treaty are declared unenforceable by the Constitutional Court, the President of the Republic may only express consent by formulating the corresponding reservation.

The economic regime, and of public finances

Article 333. Economic activity and private initiative are free, within the limits of the common good. For its exercise, no one may require prior permits or requirements, without authorization of the law.

Free economic competition is a right of all that entail responsibilities.

The company, as the basis of development, has a social function that implies obligations. The State will strengthen solidarity organizations and stimulate business development.

The State, by mandate of the law, will prevent economic freedom from being obstructed or restricted and will prevent or control any abuse that individuals or companies make of its dominant position in the domestic market.

The law shall delimit the scope of economic freedom when so required by the social interest, environmental and cultural heritage of the Nation.

Article 338. In weather of peace, only the Congress, the Departmental Assemblies and District and Municipal Councils may impose fiscal or parafiscal contributions. The law, the ordinances and the agreements must establish, directly, the active and passive subjects, the facts and the taxable bases, and tax rates.

Law, ordinances, and agreements may allow authorities to set the rate of fees and contributions charged to taxpayers, such as recovery of the costs of the services provided or participation in the benefits provided; but the system and the method to define such costs and benefits, and the way to distribute them, must be established by law, ordinances or agreements.

The laws, ordinances or agreements that regulate contributions in which the base is the result of events that occurred during a certain period, can only be applied from the period that begins after the effective date of the respective law, ordinance or agreement.

Article 345. In times of peace no contribution or tax may be received that does not appear in the revenue budget, nor may an expenditure be charged to the treasury that is not included in the expenses.

Nor can any public spending that has not been decreed by Congress, by the Departmental Assemblies, or by the District or Municipal Councils, nor transfer any credit to an object not provided for in the respective budget.

SINGLE DISCIPLINARY CODE

LAW 734 OF 2002

Article 16. Function of the disciplinary sanction. The disciplinary sanction has a preventive and corrective function, to guarantee the effectiveness of the principles and purposes set forth in the Constitution, the law and international treaties, which must be observed in the exercise of public function.

Duties

Article 34. Duties. The duties of every public servant are:

1. Comply with and enforce the duties contained in the Constitution, International Humanitarian Law treaties, others ratified by Congress, laws, decrees, ordinances, district and municipal agreements, the statutes of the entity, regulations and function manuals, judicial and disciplinary decisions, collective agreements, employment contracts and superior orders issued by a competent official.

Prohibitions

Article 35. Prohibitions. To all public servant it is forbidden:

1. Break the duties or abuse rights or exceed the functions contained in the Constitution, international treaties ratified by Congress, laws, decrees, ordinances, district and municipal agreements, statutes of the entity, regulations and manuals of functions, judicial and disciplinary decisions, collective agreements and employment contracts.

4. Accept, without permission from the corresponding authority, positions, honors or rewards from international organizations or foreign governments, or enter into contracts with them, without prior authorization from the Government.

LAW 424 OF 1998

(January 13)

BY WHICH THE MONITORING OF THE SIGNED INTERNATIONAL AGREEMENTS IS ORDERED FOR COLOMBIA

THE CONGRESS OF

COLOMBIA DECREES:

Article 1. The National Government, through the Ministry of Foreign Affairs, will submit annually to the Second Committees on Foreign Relations of the Senate and Chamber, and within the first thirty calendar days after the legislative period that begins every July 20, a detailed report on how complying with and developing the current International Agreements signed by Colombia with other states.

Article 2. Each dependency of Government national in charge of executing the International Treaties of its competence and require reciprocity in the

same, will transfer the pertinent information to the Ministry of Foreign Affairs and this, to the Second Commissions.

Article 3. The full text of this law will be incorporated as an attachment to each and every one of the International Agreements that the Ministry of Foreign Affairs present for consideration by Congress.

Article 4. This law is in force as of its enactment.

DECREE 11 OF 2004

(January 21st)

THROUGH WHICH THE STRUCTURE OF THE MINISTRY OF FOREIGN AFFAIRS IS MODIFIED AND OTHER PROVISIONS ARE ENACTED

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

in exercise of the constitutional and legal powers, especially those conferred in numeral 16 of article 189 of the Political Constitution, and article 54 of the Law 489 of 1998,

DECREES:

CHAPTER I

OBJECTIVES, FUNCTIONS, MANAGEMENT AND INTEGRATION OF THE ADMINISTRATIVE SECTOR OF FOREIGN AFFAIRS

Article 2. Objectives. The Ministry of Foreign Affairs is the governing body of the Foreign Relations Sector and is responsible, under the direction of the President of the Republic, propose, guide, coordinate and execute the foreign policy of Colombia and manage the foreign service of the Republic.

Article 3. Functions. The Ministry of Foreign Affairs will have, in addition to the functions determined by article 59 of Law 489 of 1998, the following:

1. Formulate and propose to the President of the Republic the foreign policy of the State.

2 Execute the foreign policy of the State.

5. Grant the prior concept for the negotiation and celebration of any international agreement without prejudice to the constitutional powers of the Head of State in the direction of international relations.

7. Guide, integrate and harmonize sectoral policies and programs that are the responsibility of the different State institutions, when they are related to foreign policy.

9. Coordinate, in matters of foreign relations, the State Agencies and the activities of the Public Administration, in all its orders and levels.

10. Negotiate and guide the negotiation processes, with the cooperation of other national organizations, if applicable, of treaties and other international instruments,

as well as monitor them, evaluate their results and ensure compliance.

12. Formulate and guide international cooperation policy in its different modalities.

Of the structure and functions of its dependencies

Article 4. Structure. The structure of the Ministry of Foreign Affairs will be the following:

1. Minister's Office

11 Protocol Address

12 Legal Advisory Office

13 Planning Advisory Office

14 Diplomatic Academy Directorate

2 Office of the Vice Minister of Foreign Affairs

21 Directorate of Territorial Sovereignty and Border Development

22 Europe Address

23 America Address

24 Asia, Africa and Oceania Management

25 Internal Control Office

3. Office of the Vice Minister of Multilateral Affairs

31 International Cooperation Department

32 Directorate of Multilateral Political Affairs

33 Directorate of Multilateral Economic, Social and Environmental Affairs

34 Directorate of Human Rights and International Humanitarian Law

35 Address of Cultural Affairs.

5. Permanent Delegations to Multilateral International and Regional Organizations.

6. Embassies.

Article 17. Office of the Vice Minister of Multilateral Affairs. These are functions of the office of the Vice Minister of Multilateral Affairs, in addition to those conferred in article 62 of Law 489 of 1998, the following:

1. Guide and coordinate matters related to international cooperation, including negotiations, monitoring and evaluation of compliance with foreign policy in this area.

2. Lead international cooperation negotiations, in coordination with the relevant public and private national entities, with a view to

achieve and maintain a concerted and consolidated position of the country in these.

Article 18. International Cooperation Directorate. The following are functions of the Directorate of International Cooperation:

1. Advise the Vice Minister of Multilateral Affairs on matters related to the formulation and execution of foreign policy in the area of international cooperation.
2. Coordinate with the different State entities the execution of the Foreign Policy in matters of international cooperation.
3. Propose guidelines on matter of legislation and control of activities for both public and private cooperation.
4. Project guidelines to develop international cooperation originated in the United Nations (UN), the Organization of United American States (OEA) and other specialized organizations.
5. Propose guidelines and instructions for international cooperation negotiations, considering the recommendations of the Colombian Agency for International Cooperation or whoever takes their place, when appropriate.
6. Carry out intra- and inter-institutional consultations that support the participation of the country in international cooperation negotiations.
7. Prepare documentation related to international cooperation topics, in order to be presented at international bilateral or multilateral meetings, in which the President of the Republic, the Vice President, the Minister of Foreign Affairs or the Vice Ministers participate, in coordination with the Colombian Agency for International Cooperation or who will do his times.
8. Support the Minister of Foreign Affairs or the Deputy Minister of Multilateral Affairs in the activities of the Board of Directors of the Colombian Agency for International Cooperation and analyze and conceptualize the documents to be considered by the same or by whoever acts on its behalf, when requested by the Minister of Foreign Affairs or the Vice Minister of Multilateral Affairs.
9. Study and analyze, in coordination with the Vice Minister of Multilateral Affairs, the Legal Advisory Office of the Ministry and the Colombian Agency for International Cooperation or whoever acts on its behalf, the bills presented by the Government or by parliamentary initiative, on issues related to international cooperation.
10. Follow up on the validity and execution of international cooperation conventions and agreements, including Mixed Commission projects, and to the procedures that are carried out inside and outside the country on international cooperation, in coordination with the Colombian Agency for International Cooperation or whoever takes its place.
11. Coordinate with the Colombian International Cooperation Agency or

who will take over the activities aimed at keeping national, public and private entities and Diplomatic Missions Abroad informed about the development of international cooperation issues, in order to achieve better coordination and follow-up of them.

12. Design the indicative management plan, leading to follow-up on international cooperation and prepare the management documents to be included in foreign policy reports.

13. The others that are assigned and that correspond to the nature of the dependency.

Article 28. Permanent Delegations to Multilateral and Regional International Organizations. The Permanent Delegations before International Organizations are made up of Diplomatic Agents, representatives of the National Government before International Organizations of concertation, that the country participates in and has an interest in the development and execution of its foreign policy. The regional coordination mechanisms will have national coordinators and deputies appointed by the Minister.

They are functions of the Permanent Delegations before Multilateral International Organizations and Regional, the following:

2. Integrate and harmonize the issues to be dealt with in the different international organizations and articulate the pertinent actions for their execution, especially those related to political, economic, social, environmental, cultural integration and cooperation issues in accordance with the principles of reciprocity and convenience.

Article 29. Embassies. The Embassies are diplomatic units, representatives of the National Government before other countries, in charge of executing bilateral foreign policy, with the delegated capacity to negotiate, concur and agree on terms of concertation and cooperation in matters of mutual interest, especially in the political, social, economic, commercial, environmental, scientific, technological and culture fields.

DECREE 1942 OF 2003

(July 11)

WHEREBY FUNCTIONS ARE ASSIGNED TO THE MINISTRY OF FOREIGN AFFAIRS AND THE ADMINISTRATIVE DEPARTMENT OF THE PRESIDENCY OF THE REPUBLIC

The President of the Republic of Colombia, in exercise of the powers conferred on him by numeral 16 of article 189 of the Political Constitution and article 54 of Law 489 of 1998,

DECREES:

Article 1. Assign the Ministry of Foreign Affairs the function of formulating and

guiding international cooperation policy in its different modalities.

Article 2. The Administrative Department of the Presidency of the Republic, under the direction and coordination of the Ministry of Foreign Affairs, will participate in the administration and promotion of international, technical and financial cooperation.

Article 3. This decree is in force as of the date of its publication and repeals Article 1 of Decree 1540 of 2003.

Publish and comply.

Given in Bogotá, DC, on July 11, 2003.

DECREE 2467 of 2005

(July 19)

WHEREBY THE COLOMBIAN AGENCY FOR INTERNATIONAL COOPERATION, ACCI, IS MERGED WITH THE SOCIAL SOLIDARITY NETWORK, RSS, AND OTHER PROVISIONS ARE ENACTED

The President of the Republic of Colombia, in exercise of the constitutional and legal powers, especially those indicated in numeral 15 of article 189 of the Political Constitution and in paragraphs b) and e) of article 2 of Law 790 from 2002,

CONSIDERING:

That in accordance with the provisions of article 2 of the Law 790 of 2002, the President of the Republic, as the supreme administrative authority, in accordance with the provisions of numeral 15 of article 189 of the Political Constitution, may order the merger of entities or administrative bodies of the national order, with related objects, created, organized or authorized by law, taking into account the criteria provided therein;

That from the result of the advanced technical evaluation, it is recommended that the Social Solidarity Network and the Colombian Agency for International Cooperation, ACCI, must be merged in consideration of the following causes:

b) When for reasons of fiscal austerity or administrative efficiency it is necessary to concentrate complementary functions in a single entity;

e) When technical evaluations establish that the objectives and functions of the respective entities or organizations must be fulfilled by the absorbent entity;

That taking into account that the resulting entity will develop programs aimed at serving and assisting the vulnerable and vulnerable population and that the Investment Fund for Peace, FIP, executes programs to serve this population, that is, poor families, families linked to illegal crops and families affected by violence and marginalization, and after analyzing the technical study, it is evident that the Investment Fund for Peace, FIP, should function in the entity resulting from the merger between the Social Solidarity Network and the Colombian Cooperation Agency International, ACCI;

Which upon the exposed,

DECREES:

CHAPTER I

Merger, denomination, legal nature, income and equity

Article 1. Fusion and denomination. Merge the public establishment "Colombian Agency for International Cooperation, ACCI" to the public establishment "Social Solidarity Network", which from now on will be called the Presidential Agency for Social Action and International Cooperation, Social Action.

Article 2. Legal nature. The Presidential Agency for Social Action and International Cooperation, Social Action, is a public establishment, of the national order, endowed with legal status, administrative autonomy and its own assets, attached to the Administrative Department of the Presidency of the Republic.

Article 3. Home. The Presidential Agency for Social Action and International Cooperation, Social Action, will have the city of Bogotá as its main domicile, and may also develop its powers at the national level.

Article 4. Heritage and income. The assets and income of the Presidential Agency for Social Action and International Cooperation, Social Action, is made up of:

1. The items assigned to it in the General Budget of the Nation.

2. Resources from internal and external credit, prior incorporation into the General Budget of the Nation.

3. Resources from national and international cooperation, prior incorporation to the General Budget of the Nation.

4. Movable and immovable property acquired under any title.

5. Cash donations coming indirectly to the entity prior to incorporation into the general budget of the Nation, and legally accepted donations in kind.

6. Fixed assets and inventories of the Colombian Agency for International Cooperation, ACCI, and the Social Solidarity Network, which are merged by virtue of this decree.

7. The assets, rights and obligations of the Colombian Agency for International Cooperation, ACCI, and the Social Solidarity Network.

8. The resources of the International Cooperation and Assistance Fund.

9. The resources of the Investment Fund for Peace.

10. The appropriate amounts in the General Budget of the Nation for the International Cooperation and Assistance Fund. The total annual minimum amount will be the equivalent of (2,000) legal monthly minimum wages, with an increase in agreement with what was approved by the Congress of the Republic through the General Budget Law of the Nation.

11. Donations to support cooperation among developing countries received from

bilateral and multilateral sources, unless those resources correspond to programs and cooperation projects in which the sole beneficiary is Colombia.

12. General resources for triangular operations aimed at cooperation to developing third countries.

13. The other goods and resources that, destined for the International Cooperation and Assistance Fund, are acquired under any title, in accordance with the law.

14. The other goods and resources that are acquired under any title in accordance with the law.

CHAPTER II
Object and general functions

Article 5. Object. The Presidential Agency for Social Action and International Cooperation, Social Action, aims to coordinate, manage and execute social action programs aimed at the poor and vulnerable population and development projects, coordinating and promoting national and international technical and non-reimbursable financial cooperation that the country receives and grants.

Article 6. General functions. The Presidential Agency for Social Action and International Cooperation, Social Action, will have the following functions:

1. Coordinate the development of the social action policy established by the National Government.

2. Coordinate the development of the cooperation policy established by the Ministry of Foreign Affairs.

3. Manage and promote international technical and financial cooperation not reimbursable under the direction and coordination of the Ministry of Foreign Affairs.

4. Execute, within its competence, the targeted social investment policy programs defined by the President of the Republic, contemplated in the Law of the National Development Plan, aimed at the poorest and most vulnerable sectors of the Colombian population.

5. Carry out inter-institutional coordination so that social action reaches orderly and timely manner to the national territory.

6. Coordinate the National System of Comprehensive Attention to the Population Displaced by Violence and execute accompaniment actions for the return, prevention, protection, humanitarian attention and relocation in favor of the displaced population and at risk of displacement, in accordance with the powers assigned by the Law 387 of 1997 and its regulatory decrees.

7. Assist victims of violence in accordance with the provisions of the Law 418 of 1997, extended and modified by Law 782 of 2002 and those that modify, add or substitute.

8. Coordinate and articulate with the potential contributors and recipients of international public and private cooperation, the non-reimbursable technical and financial cooperation received and granted by the country, as well as the resources obtained as a result of debt cancellation with a social or environmental nature.

9. Support the Ministry of Foreign Affairs in the negotiation processes of

agreements, treaties or framework conventions on cooperation and complementary agreements or conventions on international, technical or non-refundable financial.

10. Manage resources, plans, programs and projects of international non-reimbursable technical and financial cooperation or private cooperation that the country advances, when appropriate, under the guidelines issued by the Ministry of Foreign Affairs.

11. promote improvement of the living conditions of the poorest and most vulnerable population of the country, through the coordination and execution of programs and projects with resources from national or international cooperation sources, in accordance with the policy determined by the National Government.

12. The others indicated by the law in development of its object.

CHAPTER III
Management and administration bodies

Article 7. Direction. The direction and management of the Presidential Agency for Social Action and International Cooperation, Social Action, will be in charge of a Board of Directors and a Director General.

Article 8. Board of Directors. The Presidential Agency for Social Action and International Cooperation, Social Action, will have a Board of Directors made up of:

1. The Director of the Administrative Department of the Presidency of the Republic or his delegate, who will preside over it.

2. The Minister of Foreign Affairs or the Vice Minister for Multilateral Affairs.

3. Three (3) delegates designated by the President of the Republic.

Paragraph 1. The Director General of the Presidential Agency for Social Action and International Cooperation, Social Action, will attend the meetings of the Director Council with the right to speak but without vote.

Paragraph 2. The Secretary of the Board of Directors will be exercised by the Secretary General of the Presidential Agency for Social Action and International Cooperation, or who will do his times.

Article 9. Functions of the Board of Directors. The following are functions of Board of Directors:

1. Formulate, at the proposal of the legal representative, the general policy of the agency, the plans and programs that, in accordance with the Organic Planning Law and the Organic Budget Law, must be proposed for incorporation into the sectorial plans and through these, to the National Development Plan.

2. Formulate, at the proposal of the legal representative, the continuous improvement policy of the entity, as well as the programs aimed at guaranteeing the administrative development.

3. Learn about the semi-annual evaluations of execution presented by the administration of the entity.

4. Propose to the National Government the modifications of the structure that they consider pertinent and adopt the internal statutes of the entity and any reform that

is introduced to them in accordance with the provisions of their acts of creation or restructuring.

5. Approve the annual budget project of the respective body, in accordance with current legal regulations.

6. Submit to the approval of the National Government the staff of the entity;

7. Approve the Annual Monthly Cash Program, PAC of own resources.

8. Set the general guidelines that guide the non-reimbursable international technical and financial cooperation that the country grants or receives, in accordance with the cooperation policies indicated by the National Government.

9. Delegate the functions of its competence that it considers pertinent to the Director General, in accordance with current legal regulations.

10. Make your own rules.

11. The others indicated by the law, the act of creation and the internal statutes.

Article 10. General Director. The Director General is the agent of the President of the Republic of the free appointment and removal of him, who will be the legal representative of the entity and will fulfill the functions indicated in the law.

CHAPTER IV
Structure and functions of dependencies

Article 11. Structure. The structure of the Presidential Agency for the Social Action and International Cooperation, Social Action, will be as follows:

BOARD OF DIRECTORS

1. OFFICE OF THE GENERAL DIRECTOR
11 Planning Advisory Office
12 Legal Advisory Office
13 Internal Control Office
14 Office of Internal Disciplinary Control
2. SOCIAL SOLIDARITY NETWORK MANAGEMENT
21 Sub-directorate of Attention to Victims of Violence
22 Sub-directorate of Attention to Displaced Population
3. INTERNATIONAL COOPERATION DIRECTORATE
31 Sub-directorate of New Sources of International Cooperation
32 Sub-directorate of Official Development Assistance
4. GENERAL SECRETARY
5. ADVISORY AND COORDINATION BODIES
51 Coordination Committee of the Internal Control System
52 Judicial Defense and Conciliation Committee

53 Personnel Commission

Article 12. Office of the General Director. They are functions of the Office of the General Director, the following:

1. Direct the implementation of the policy regarding social action and international technical and financial cooperation of a non-reimbursable nature at the territorial level.

2. Advise the National Government in the formulation of the policy in matters of social action and international cooperation.

3. Direct, coordinate, monitor and control the execution of the functions and programs of the organization and its staff.

4. Render general or periodic and particular reports to the President of the Republic, the Director of the Administrative Department of the Republic and other competent authorities on the activities carried out, the general situation of the entity and the measures adopted that may affect the course of the government policy.

5. Organize, direct and control the functions of the entity, order the expenses and sign as legal representative the acts, agreements and contracts, for the fulfillment of the objectives and functions assigned to the entity.

6. Coordinate with the Ministry of Foreign Affairs and diplomatic representations abroad, making contacts with potential contributors of international cooperation.

7. Approve the plans, programs and projects of international technical cooperation or non-reimbursable financial contribution that the country wishes to receive or grant.

8. Manage the Fund for Comprehensive Attention to the Population Displaced by Violence, the International Cooperation and Assistance Fund, the other funds that are assigned and assets that constitute the entity and control the management of financial resources, so that these are executed in accordance with the established plans and programs and with the organic rules of the National Budget.

9. Celebrate, by delegation of the National Government, the contracts referred to in article 355 of the Political Constitution, in accordance with Law 368 of 1997.

10. Authorize the execution and/or coordination of special programs and projects that contribute to averting a situation of social emergency or that requires special or immediate attention from the State.

11. Submit for consideration and approval of the Board of Directors the Annual Monthly Cash Program, PAC, income, expenses, budgetary reserves and payable accounts from the Agency.

12. Submit for the consideration and approval of the Board of Directors the Entity's annual draft budget, its additions and transfers, as well as the entity's financial statements, in accordance with the legal, organic provisions and regulations on the matter.

13. Direct and control the management of financial resources so that they are executed in accordance with plans, programs and with the organic rules of the National Budget.

14. Direct the implementation of the Quality Management System and continuous improvement in order to guarantee the provision of the entity's services.

15. Promote, program and organize the efficient and rational distribution of donations received in accordance with the guidelines indicated by the National Government.

16. Appoint agents and attorneys-in-fact who represent the entity in judicial and extrajudicial matters for the best defense of the interests of the entity.

17. Know and decide in the second instance the disciplinary processes that are advanced against the public servants of the entity.

18. Appoint and remove the entity's personnel, as well as issue the administrative acts related to the administration of the entity's personnel, in accordance with current regulations.

19. Direct communications and programs to promote the image of the national and international agency.

20. Create and organize by internal resolution and permanent or transitory, committees and internal working groups to meet the needs of the service considering the plans, programs and projects defined by the entity.

21. Distribute the positions of the global staff, in accordance with the internal organization, the needs of the entity and the plans and programs outlined by the entity.

22. The other duties assigned by law.

Article 13. Planning Advisory Office. These are functions of the Planning Advisory Office:

1. Advise and provide technical assistance as pertinent to the Director General and other dependencies of the entity in the formulation of policies and in the planning process of the entity.

2. Prepare the Strategic Plan of the entity in coordination with the different dependencies of the entity and carry out its evaluation through the design of a system of indicators that allows monitoring the execution of programs and projects.

3. Direct and coordinate the design, plans, programs and projects that allow the fulfillment of the entity's objectives.

4. Prepare, subject to the National Development Plan and in coordination with the dependencies, the entity's Annual Management Plan, the programs and projects that are required for the fulfillment of the entity's functions and project the necessary adjustments.

5. Advance technical cost-benefit studies, cost-effectiveness, feasibility, trend analysis and others that are necessary for the design of the plans, entity programs and projects.

6. Perform diagnosis of the entity and in accordance with the results obtained, present proposals aimed at improving the quality of services and the fulfillment of functions, optimizing the use of available resources, modernize and technify the entity.

7. Design, develop, implement, feed and keep updated the system of

indicators, statistics and measurement of the entity, in coordination with the Internal Control Office, for the evaluation of the results of the management of the Presidential Agency.

8. Prepare, in accordance with current regulations and in coordination with the Directorates, Sub-directorates and the General Secretariat, the entity's annual budget draft and coordinate the necessary procedures for its consideration and approval.

9. Submit to the National Planning Department the investment projects of the entity to be incorporated into the Bank of Projects.

10. Design and propose mechanisms and instruments that facilitate the development of a participatory and permanent planning process.

11. Carry out analyzes and present recommendations on current or future potential services offered by the entity.

12. Direct, coordinate and propose the design, rationalization and standardization of the processes and procedures required by the entity.

13. Direct the preparation of the procedure manuals, in coordination with the different dependencies of the entity, in order to rationalize the management and agency resources.

14. The others inherent to the nature and functions of the dependency.

Article 14. Legal Advisory Office. These are functions of the Legal Advisory Office:

1. Advise the General Directorate and the other dependencies of this on legal matters related to the entity, to guarantee adequate decision-making in social management and international cooperation and maintain unity of criteria in the interpretation and application of the provisions in agency field of action.

2. Represent judicially and extrajudicially the entity in the processes and other legal actions that are established against it or that it must promote, through a power of attorney granted by the legal representative of the entity and keep it informed about their development.

3. Prepare, analyze and conceptualize the bills, decrees, agreements, resolutions, contracts, national and international conventions and other acts and/or administrative matters that must be issued or proposed to the entity, which are submitted for your consideration.

4. Resolve queries made by public and private organizations, as well as by users and individuals, in accordance with the rules that govern the services and functions of the entity.

5. Ensure the legalization and securitization of the entity's real estate.

6. Advance the executive processes by executive jurisdiction as determined by the entity.

7. Coordinate the development of the investigations that in the legal field required by the entity.

8. Attend the judicial hearings to which the Legal Representative of the entity has been summoned and/or in which it is a party, in order to represent it and advance

all the necessary actions and interpose the resources that may take place.

9. The others inherent to the nature and functions of the dependency.

Article 15. Internal Control Office. These are functions of the Internal Control Office:

1. Advise the General Director, in the definition of policies related to the design and implementation of internal control systems that contribute to increasing the efficiency and effectiveness in the different dependencies of the entity, as well as that of guaranteeing the quality in the provision of agency services.

2. Design and establish, in coordination with the different dependencies of the agency, the criteria, methods, procedure and indicators of efficiency and productivity to evaluate the management and propose the preventive and/or corrective measures of the case.

3. Coordinate, implement and promote administrative management control systems, financial and institutional results.

4. Carry out periodic evaluations on the execution of the action plan, the fulfillment of the activities of each dependency and propose the necessary preventive and corrective measures.

5. Verify compliance with the administrative and financial requirements in accordance with the procedures and fiscal control established for the movement of funds, securities and assets of the entity.

6. Ensure the correct execution of the operations, agreements and contracts of the entity and monitor how public funds are invested and report to the Director General, when there are irregularities in their management.

7. Monitor that the attention provided by the entity is in accordance with current legal regulations and ensure that the complaints and claims received from citizens in relation to the mission of the entity, are given timely and efficient attention, and render a semi-annual report on the particular.

8. Design and implement the entity's audit system, establishing standards, goals and objectives and analyzing the results for preventive decision-making and/or corrective actions.

9. lead and coordinate the development of activities that seek maximum efficiency in the fulfillment of administrative procedures and in the development of the work of each dependency.

10. The others inherent to the nature and functions of the dependency.

Article 16. Office of Internal Disciplinary Control. These are functions of the Office of Internal Disciplinary Control:

1. Exercise the disciplinary function observing the fullness of the forms of the procedure regulated in the National Constitution and the Single Disciplinary Code.

2 Advise the General Director in the definition of policies tending to prevent behaviors that may constitute disciplinary offenses.

3. Know and decide in the first instance the disciplinary processes that are advanced against public servants of the entity.

4. Advance disciplinary investigations for illicit enrichment and other administrative irregularities that may take place in the entity and coordinate with the corresponding agencies of the Attorney General's Office and other competent agencies, matters related to the control of actions of the public servants of the entity.

5. Collect, perfect and ensure the evidence that will serve as support for criminal complaints about illegal conduct detected in the disciplinary procedures proceedings and forward them to the Attorney General's Office, for matters within its jurisdiction.

6. Receive and process complaints or reports for violation of constitutional or legal norms, allegedly committed by the public servants of the entity.

7. Participate in the formulation and development of programs that promote institutional values that promote labor responsibility and administrative ethics.

8. Advise and guide the directors and group coordinators of the entity on matters related to ethical conduct and duties of public servants.

9. Keep an updated record of the rulings made against the public servers.

10. Keep records up to date of the complaints received.

11. The others inherent to the nature and functions of the dependency.

Article 17. Social Solidarity Network Directorate. They are functions of the Social Solidarity Network Directorate:

1. Direct the development of policies that correspond to the programmatic lines of the entity, both at the national and regional levels, in accordance with the guidelines delivered by the Director General.

2. Determine the criteria that allow directing social spending towards the poorest and most vulnerable sectors of the population, considering the indexes of poverty, vulnerability, affectation by political violence and efficiency in social public investment, in accordance with the guidelines formulated by the National Government and the Board of Directors.

3. Coordinate the development of policies for the care of the displaced population and those at risk of displacement, and for the care of victims of violence.

4. Establish and implement the procedures and mechanisms for the adequate coordination of the National System of Comprehensive Attention to the Displaced Population.

5. Establish and implement the Operating Regulations of the programs executed by the entity.

6. Coordinate with the respective dependencies, the financing and co-financing of social programs and projects.

7. Direct the financing, co-financing and execution of programs and projects, developing and implementing procedures for monitoring, evaluation and monitoring of them.

8. Promote agreements mechanisms with entities and public bodies and private entities of the national, regional and local order, in order to generate alliances for the execution of programs and social projects.

9. Establish mechanisms and spaces for community participation in programs and projects coordinated and executed by the entity.

10. Define and develop strategies for strengthening social organizations and communities in the territory.

11. Coordinate the execution of programs and projects that help to avoid situations of social emergency or that require special attention of the State.

12. Provide the technical assistance required by the entities and organizations of the national and territorial order, in the preparation of social action projects to be financed or co-financed by the entity.

13. Prepare and submit periodic monitoring and evaluation reports on the management of the programs executed and coordinated by the entity.

14. The others inherent to the nature and functions of the dependency.

Article 18. Sub-directorate for Attention to Victims of Violence. They are functions of the Sub-directorate of Attention to Victims of Violence:

1. Develop public policy to care for the population victim of violence that is within the competence of the entity.

2. Deliver humanitarian assistance to the people referred to in article 15 of Law 418 of 1997 extended and modified by Law 782 of 2002 and those who modify, add or substitute.

3. Coordinate with other institutions that provide emergency humanitarian assistance and protection of Human Rights, immediate attention to victims of violence when the situation so warrants.

4. Coordinate with the Ministry of the Social Protection the medical attention to the victims, when these require intervention of the entity.

5. Carry out the follow-up of the signed Agreements charged to the budget destined for the Attention to Victims of Violence.

6. Keep the information system updated about victims of violence who have requested humanitarian assistance from the entity.

7. Submit management reports established by law and those requested surveillance and control bodies.

8. Participate in inter-institutional coordination meetings on the specific subject to victims of violence.

9. The others inherent to the nature and functions of the dependency.

Article 19. Sub-directorate for Attention to the Displaced Population. They are functions of the Sub-directorate of Attention to Displaced Population:

1. Guide and design, in coordination with the entities that make up the National System of Comprehensive Attention to the Population Displaced by Violence, Snaipd, the Single Registration Format and train the Public Ministry, in the procedure to obtain the declaration referred to in numeral 1 of article 32 of Law 387 of 1997, modified by Law 962 of 2005.

2. Feed and update the Single Register of Displaced Population.

3. Direct the assembly of the Attention and Orientation Units, to attend to the displaced population.

4. Develop strategies to improve the entity's response capacity in handling emergencies caused by massive displacement of population.

5. Coordinate and direct the accompaniment, guidance and monitoring of emergencies caused by massive population displacements that occur in the national territory.

6. Coordinate the execution of relief, assistance, and support actions for the displaced population, in order to mitigate the basic needs of food, shelter, elements of internal habitat within the framework of current regulations.

7. Coordinate, guide, accompany and monitor collective return processes and individual of the displaced population.

8. Promote actions and measures in the medium and long term, with the purpose of generating conditions of economic and social sustainability for the displaced population.

9. Coordinate with the responsible national entities, the access of the displaced population to housing programs and provide improvement to their living conditions.

10. The others inherent to the nature and functions of the dependency.

Article 20. Directorate of International Cooperation. They are functions of the Directorate of International Cooperation:

1. Advise the Director General in achieving technical international cooperation and financial of a non-reimbursable nature, in order to support the execution of priority programs and projects for the development of the country.

2. Coordinate the identification of priority areas and issues at the national and regional levels towards which international cooperation should be directed, and also those experiences and national capacities to be offered in cooperation abroad.

3. Coordinate and analysis investigations on the policies, guidelines, trends and programs of international cooperation, which serve to guide strategic development and make the results obtained available to national public or private entities, so that they can take advantage of the possibilities of technical or financial cooperation non-refundable.

4. Advise the General Director in the negotiation with the sources of programming of the cooperation that the country receives or grants, as well as the conditions of implementation of the respective programs, projects and activities, previously approved by the Director General, including Technical Cooperation among Developing Countries (TCDC) and triangulation operations.

5. Establish an international cooperation information system that articulates the different public and private actors of cooperation in Colombia.

6. Coordinate guidance and advice to the competent public entities, sources and executors, on the implementation of the most effective technical, financial and legal mechanisms and modalities for the formulation, negotiation, execution and monitoring of international cooperation resources, in order to improve its management in a coordinated and consistent manner with national policies.

7. Present for the consideration of the General Director of the entity the study and concept, on the plans, programs and projects of international cooperation, presented

by public entities of the national or territorial order, as well as those presented by NGOs that require endorsement or no objection, in order to decide on their viability.

8. Direct the periodic monitoring and follow-up of the execution of international cooperation programs and projects, including TCDC and triangular cooperation actions, with the support of the national executing entities and the territory units of the entity.

9. Submit for the consideration of the Director General the programming of activities, plans and projects to be carried out charged to the resources of the Cooperation and International Assistance Fund (FOCAI).

10. The others inherent to the nature and functions of the dependency.

Article 21. Sub-directorate of New Sources of International Cooperation. The functions of the Sub-directorate of New Sources of International Cooperation are:

1. Carry out the identification, analysis and dissemination of new sources of international cooperation, including decentralized cooperation, that offered by the private sector, churches, unions, companies and business foundations, and non-governmental organizations, so that national entities, public or private, can be used as possibilities for technical or financial cooperation.

2. Establish contact with new sources of international cooperation and promote the generation of alliances with national entities, public or private, to obtain resources for national and international cooperation in the priorities for social action and the development of the country.

3. Support the creation and strengthening of cooperation networks of the private sector, civil society, public entities at the national or territorial level, national and international, and coordinate their participation in the follow-up mechanisms to international cooperation.

4. Coordinate the creation of alliances with private organizations, NGOs and civil society organizations, for the articulation in the execution of international cooperation programs and projects, in order to enhance resources and generate greater impact on the population targeted.

5. Study and issue a concept, with the support of sectoral or competent territorial entities, on the programs, projects and international cooperation activities presented by NGOs or private or civil society organizations, which require endorsement or no objection requested by an international cooperation agency or organization.

6. Guide the missions of the cooperators for the identification, monitoring and evaluation of projects or activities of non-governmental, decentralized cooperation or other non-traditional forms of cooperation.

7. Carry out analyzes on the evolution of aid from new sources of international cooperation, its trends, criteria and operating mechanisms, and disseminate them to the pertinent national and international entities.

8. The others inherent to the nature and functions of the dependency.

Article 22. Sub-directorate of Official Development Assistance. They are functions of Sub-directorate of Official Development Assistance::

1. Advise and guide national entities, on the criteria, modalities, methodologies and procedures defined with the cooperating sources of an official nature, for the identification, formulation, execution and monitoring of programs,

international cooperation projects and activities non-reimbursable technical and financial assistance, including horizontal and triangular cooperation.

2. Study and issue a concept, with the support of sectoral or competent territorial entities, on the programs, projects and international cooperation activities presented by public entities of the national or territorial order, including those of horizontal and triangular cooperation.

3. Establish contacts with official cooperating sources to obtain information on their respective criteria, lines, modalities, processes and procedures that international cooperation initiatives must comply with, programmable or non-programmable.

4. Arrange with official cooperating sources the articulation of the offer and demand of existing international cooperation, in accordance with the areas of priority defined.

5. Coordinate with the Ministry of Foreign Affairs the preparation of cooperation issues to be included in international treaties, agreements or conventions and support the processes for its negotiation.

6. Guide the missions of the cooperators for the identification, follow-up and evaluation of the projects or activities of Official Development Assistance.

7. Apply the mechanisms and methodologies for monitoring and evaluation of international cooperation programs, projects and activities from Official Development Assistance, with the support of executing entities and cooperating sources.

8. Coordinate the generation of alliances with public and private entities and organizations of the national, regional and local order, for the articulation in the execution of international cooperation programs and projects from official development aid, in order to enhance resources and generate greatest impact on target population.

9. Carry out the programming of activities to be financed with the International Cooperation and Assistance Fund (FOCAI), monitor its implementation and prepare reports on its execution.

10. The others inherent to the nature and functions of the dependency.

Article 23. General Secretariat. They are functions of the General Secretariat:

1. Advise the Director General in the formulation of policies, rules and procedures for the administration of human, physical, financial and technological resources of the entity.

2. Coordinate and schedule the activities of personnel administration, industrial safety and labor relations of the personnel, in accordance with the policies of the entity and the current legal regulations established on the matter.

3. Direct the selection, induction, training and quality of work life programs for the agency's employees, in accordance with current legal regulations.

4. Coordinate the carrying out studies on personnel plant and keeping updated the specific manual of functions and requirements of the entity.

5. Direct and control the administrative and financial processes of the agency inall levels.

6. Schedule the processes of bidding, invitation, contracting, acquisition, storage, custody and acquisition of goods and materials.

7. Prepare and review the minutes of contracts, agreements, draft resolutions, settlement of contracts and agreements, specifications and terms of reference of the bids, public invitations called by the agency, in accordance with current legal and regulatory standards.

8. Approve the unique guarantees required for compliance with the different contracts.

9. Propose and execute policies, plans, programs and other related actions with the financial and budget management of the entity.

10. Participate with the Planning Advisory Office in the preparation of the operating and investment budget project and the Monthly Annual Cash Plan, PAC, that the entity must adopt.

11. Lead the preparation of the financial sources plan and uses of the entity's resources, monitor them and propose the necessary corrections.

12. Propose to the Director General the changes that are considered pertinent to improve the entity's budget and financial management.

13. Coordinate and control the proper provision of general services for the proper functioning of the entity.

14. Control and direct inventories of returnable and consumable items and Coordinate the preparation of the annual purchasing program.

15. Design, guide, evaluate and update the policies, plans and procedures related to the growth and design of the technological platform of the entity.

16. Ensure the proper application of the administrative development system, related to the policies, strategies, methodologies, techniques and mechanisms of an administrative and organizational nature for the management and handling of the entity's human, technical, material, physical and financial resources, aimed at strengthening administrative capacity and institutional performance, in accordance with current legal regulations.

17. Direct, coordinate and propose agreement with the policies set by the entity, user service and attention to complaints and claims of the entity according to current regulations.

18. The others inherent to the nature and functions of the dependency.

Article 24. Internal Advisory and Coordination Bodies. The composition and functions of the Coordination Committee of the Internal Control System, the Judicial Defense and Conciliation Committee and the Personnel Commission, will be governed by the legal and regulatory provisions on the matter applicable to each of them.

CHAPTER V

Funds as a special account management system

Article 25. International Cooperation and Assistance Fund. The International Cooperation and Assistance Fund, created by Law 318 of 1996, will function as a special account, without legal status, of the Presidential Agency for Social Action and International Cooperation, Social Action, in order to support the Non-reimbursable technical and financial cooperation actions and assistance that Colombia carries out with other developing countries.

Article 26. Resources. The International Cooperation and Assistance Fund will count with the following resources:

1. The appropriate sums in the General Budget of the Nation. The total minimum annual amount will be the equivalent of 2,000 legal monthly minimum wages, with an increase in accordance with what was approved by the Congress of the Republic through the General Budget Law of the Nation.

2 Donations received from bilateral and multilateral sources to support cooperation among developing countries, unless those resources correspond to cooperation programs and projects in which the sole beneficiary is Colombia.

3. The general resources for triangular operations oriented to cooperation to developing third countries.

4. The other assets and resources that are acquired for this fund under any title, in accordance with the law.

Article 27. The resources of the International Cooperation and Assistance Fund will be used to finance in accordance with the priorities of foreign policy and national convenience, programs, projects and cooperation activities that Colombia carries out with other countries of similar or lesser degree of development, prior approval of the Board of Directors of the Presidential Agency for Social Action and International Cooperation, Social Action.

Article 28. The management and destination of resources. The management and destination of the resources will be defined by the Board of Directors of the Presidential Agency for Social Action and International Cooperation, Social Action.

Paragraph. In any case, by decision of the Board of Directors of the Presidential Agency for Social Action and International Cooperation, Social Action, all or part of the resources may be administered by the National Fund for Development Projects, Fonade.

Article 29. Expenditure Authorization. The Director General of the Presidential Agency for Social Action and International Cooperation, Social Action, will be in charge of spending the fund's resources and will be in charge of executing and controlling the contracts and agreements entered into with them.

Article 30. The Investment Fund for Peace, FIP. The Investment Fund for Peace, FIP, created by Law 487 of 1998, is assigned as a special account, without legal status, which will be managed as a separate system of accounts, to the Presidential Agency for Social Action and International Cooperation, Social Action, in order to finance and co-finance, the programs and projects structured to obtain peace in the country, administered by the board of directors and subject to the inspection and surveillance of a special oversight, without prejudice of the powers in charge of the Comptroller General of the Republic.

Article 31. Legal Regime of Acts and Contracts of the FIP. For all purposes, the contracts that are entered into for the operation of the Fund to arbitrate resources or for the execution or investment of the same, will be governed by the rules of private law, without prejudice to the duty of objective selection of the contractors and the exercise of the control by the competent authorities of the behavior of public servants who have intervened in the conclusion and execution of contracts.

Article 32. Temporary. The budget, accounting management and payments of the Investment Fund for Peace, FIP, may continue to be executed until December 31, 2005 through the Administrative Department of the Presidency of the Republic.

CHAPTER VI
labor provisions

Article 33. Adoption of the Personnel Plant. In accordance with the structure provided for by this decree, the National Government will proceed to adopt the plant staff of the Presidential Agency for Social Action and International Cooperation, Social Action.

Article 34. Attributions of the officials of the current plants. The officials of the staff of the Colombian Agency for International Cooperation and the Social Solidarity Network will continue to exercise the powers assigned to them, until it is adopted and incorporated into the staff of the Presidential Agency for Social Action and International Cooperation, Social Action, in accordance with the provisions of the previous article.

CHAPTER VII
Final provisions

Article 35. Current contracts. The contracts and agreements currently in force entered into by the merged entities are understood to be subrogated to the Presidential Agency for Social Action and International Cooperation, Social Action, which will continue with its execution and compliance without the need to sign any additional document. . The documentation related to each of said contracts and agreements must be submitted, duly numbered and related, to the General Secretariat, within a period not exceeding 30 days, counted from the publication of the decree adopted by the personnel plant.

Article 36. Transfer of goods, rights and obligations. The assets, rights and obligations of the Colombian Agency for International Cooperation, ACCI, and the Social Solidarity Network, must be transferred to the Presidential Agency for Social Action and International Cooperation, Social Action.

Article 37. In developing of process of fusion, the adequacy and operation accounting, financial, treasury, warehouse and other support services systems, as well as the transfer of assets, rights and obligations to the Presidential Agency for Social Action and International Cooperation, Social Action, must conclude on December 31 of 2005. The foregoing in accordance with the rules governing the matter.

Article 38. Legal rights and obligations. In development of the merger process, the transfer of the litigious rights and obligations to the Presidential Agency for Social Action and International Cooperation, Social Action, must conclude on December 31, 2005. The foregoing in accordance with the regulations that regulate the matter.

Article 39. Budget and accounting adjustments. The Ministry of Finance and Public Credit will make the budget adjustments in accordance with the provisions of the organic law of the National Budget so that the appropriations of the merged entities transferred to the Presidential Agency for Social Action and International Cooperation, Social Action. Likewise, the accounting and financial statements of the Presidential Agency for Social Action and International Cooperation, Social Action, will be made in accordance with the provisions of the General Accounting Office of the Nation and by current legal provisions.

Article 40. Special obligations of management and trust employees and those responsible for the files of the *merged* entities. Employees who perform management and trust jobs or positions, those responsible for the archives of the merged entities must render the corresponding fiscal accounts and inventories and deliver the goods and archives under their charge, in accordance with the rules and procedures established by the Office of the Comptroller General of the Republic, the General Accounting Office of the Nation and the General Archive of the Nation, without this implying exoneration of the responsibility that may arise in the event of irregularities.

Article 41. Temporary. The budgetary reserves and accounts payable for the fiscal year 2004 and those that existed for 2005, duly constituted from the budget of the merging entities and the special account management funds, will be executed by the Presidential Agency for Social Action and International Cooperation, Social Action.

Article 42. Normative references. As of the entry into force of this decree, all references made by current legal provisions to the Social Solidarity Network and the Colombian Agency for International Cooperation must be understood as referring to the Presidential Agency for Social Action and the International Cooperation, Social Action.

Article 43. Validity. This decree is in force as of the date of its publication and repeals the provisions that are contrary to it, especially Decrees 2713 of 1999, 2808 of 1997, 2944 of 2003 and 1540 of 2003.

Publish and comply.

Given in Bogotá, DC, on July 19, 2005.

ALVARO URIBE VELEZ

The Minister of Finance and Public Credit,

Alberto Carrasquilla Barrera.

The Director of the Administrative Department of the Presidency of the Republic,

Bernard Moreno Villegas.

The Director of the Administrative Department of the Civil Service,

Fernando Grillo Rubiano.

AGREEMENT 16 OF 2005

(May 8)

WHY WHICH THE INTERNAL STATUTES OF THE PRESIDENTIAL AGENCY FOR SOCIAL ACTION AND INTERNATIONAL COOPERATION - SOCIAL ACTION ARE ADOPTED

The DIRECTING COUNCIL OF THE PRESIDENTIAL AGENCY FOR SOCIAL ACTION AND INTERNATIONAL COOPERATION - SOCIAL ACTION

In exercise of its legal powers conferred by number 4 of article 9 of Decree 2467 of July 19, 2005,

AGREE

ARTICLE 1. adopt the internal statutes that govern the organization and operation of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION.

I. Name, legal nature, domicile and jurisdiction, duration, object and functions

ARTICLE 2. DENOMINATION. The Entity for all legal purposes will be called the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION.

ARTICLE 3. LEGAL NATURE. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, is a national public establishment, endowed with legal personality, administrative autonomy and its own assets, attached to the Administrative Department of the Presidency of the Republic.

ARTICLE 4. ADDRESS AND JURISDICTION. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, extends to the entire national territory, will have the city of Bogotá as its main domicile, and may also develop their skills at the national level.

ARTICLE 5. DURATION. The duration of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, is indefinite.

II. object and functions

ARTICLE 6. OBJECT. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, aims to coordinate, manage and execute social action programs aimed at the poor and vulnerable population and development projects, coordinating and promoting national and international, technical and financial cooperation not reimbursable that the country receives and grants.

ARTICLE 7. FUNCTIONS. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will have the following functions:

1. Coordinate the development of the social action policy established by the National Government.

2. Coordinate the development of the cooperation policy established by the Ministry of Foreign Affairs.

3. Manage and promote non-reimbursable international technical and financial cooperation under the direction and coordination of the Ministry of Foreign Affairs.

4. Execute, within its competence, the targeted social investment policy programs defined by the President of the Republic, contemplated in the Law of the National Development Plan, aimed at the poorest and most vulnerable sectors of the Colombian population.

5. Carry out inter-institutional coordination so that social action reaches orderly and timely manner to the national territory.

6. Coordinate the National System of Comprehensive Attention to the Population Displaced by Violence and execute accompaniment actions for the return, prevention, protection, humanitarian attention and relocation in favor of the displaced population and at risk of displacement, in accordance with the powers assigned by the Law 387 of 1997 and its regulatory decrees.

7. Assist victims of violence in accordance with the provisions of the Law 418 of 1997, extended and modified by Law 782 of 2002 and those that modify, add or substitute.

8. Coordinate and articulate with the potential contributors and recipients of public and private international cooperation, the non-reimbursable technical and financial cooperation that the country receives and grants, as well as the resources obtained as a result of debt cancellation with a social content nature. or environmental.

9. Support the Ministry of Foreign Affairs in the negotiation processes of framework agreements, treaties or conventions on cooperation and complementary agreements or conventions on international, technical or non-refundable financial.

10. Manage resources, plans, programs and cooperation projects non-reimbursable technical and financial international or private cooperation that the country advances, when appropriate, under the guidelines issued by the Ministry of Foreign Affairs.

11. Promote improvement of the living conditions of the poorest and most vulnerable population of the country, through the coordination and execution of programs and projects with resources from national or international cooperation sources, in accordance with the policy determined by the National Government.

12. The others indicated by the law in development of its object.

III. Management and administration

ARTICLE 8. MANAGEMENT AND ADMINISTRATION. The Direction and Administration of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be in charge of a Board of Directors and a Director General.

ARTICLE 9. COMPOSITION OF THE BOARD OF DIRECTORS. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will have a Board of Directors composed of:

1. The Director of the Administrative Department of the Presidency of the Republic or his delegate, who will preside over it.

2. The Minister of Foreign Affairs or the Vice Minister for Multilateral Affairs.

3. Three (3) delegates designated by the President of the Republic.

FIRST PARAGRAPH. The members of the Board of Directors will take possession of their positions before the Director of the Administrative Department of the Presidency of

the Republic.

SECOND PARAGRAPH. The fees of the members of the Board of Directors, will be subject to the legal provisions in force on the matter.

ARTICLE 10. FUNCTIONS OF THE BOARD OF DIRECTORS. They are functions of the Director Council:

1. Formulate, at the proposal of the legal representative, the general policy of the agency, the plans and programs that, in accordance with the Organic Planning Law and the Organic Budget Law, must be proposed for incorporation into the sectorial plans and through these, to the National Development Plan;

2 Formulate, on proposal of the legal representative, the policy of continuous improvement of the entity, as well as the programs oriented to guarantee the administrative development;

3. Learn about the semi-annual evaluations of execution presented by the administration of the entity;

4. Propose to the National Government the modifications of the structure that they consider pertinent and adopt the internal statutes of the entity and any reform that is introduced in them in accordance with the provisions of its acts of creation or restructuring;

5. Approve the annual budget project of the respective body, in accordance with current legal regulations;

6. Submit to the approval of the National Government the staff of the entity;

7. Approve the Annual Monthly Cash Program - PAC of own resources;

8. Set the general guidelines that guide the non-reimbursable international technical and financial cooperation that the country grants or receives, in accordance with the cooperation policies indicated by the National Government.

9. Delegate the functions of its competence that it considers pertinent to the Director General, in accordance with current legal regulations;

10. Give itself its own rules;

11. The others indicated by the law, the act of creation and the internal statutes.

ARTICLE 11. SECRETARY OF THE BOARD OF DIRECTORS. The Secretary of the Board of Directors will be exercised by the Secretary General of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION.

ARTICLE 12. QUORUM. The Board of Directors will require the attendance of half plus one of its members to deliberate. Its decisions shall be adopted by majority vote of the members present.

ARTICLE 13. ACTS OF THE COUNCIL. The acts of the Board of Directors will be called agreements, which must be signed by the person presiding over them and by the Council secretary.

FIRST PARAGRAPH. Minutes will be drawn up of the decisions of the Board of Directors that will contain a succinct list of the agreements adopted, the topics

debated, the people who have intervened, the messages read, the proposals presented, the designated commissions and the decisions adopted by it, which will be signed by the President of the Council or whoever acts on his behalf and by the Secretary of the same.

SECOND PARAGRAPH. The agreements and minutes will be numbered successively with indication of the day, month and year in which they are issued and will be in the custody of the Secretary of the Board.

ARTICLE 14. QUALITY OF THE MEMBERS OF THE COUNCIL. The members of the Board of Directors, although they exercise public functions, they do not acquire by that fact alone the quality of public employees; however, they are subject to the regime of responsibilities, incompatibilities and disabilities established in the Law and regulations.

ARTICLE 15. SESSIONS. The Board of Directors will meet ordinarily at least once a month and extraordinarily when summoned by its President, the General Director of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, or at the request of the majority of its members. The meetings must be scheduled at least three (3) days in advance.

FIRST PARAGRAPH. To the sessions of the Board of Directors Representatives or spokespersons of the communities, of the non-governmental organizations, or the relevant officials may be invited. These meetings may be held outside of Bogotá, when the circumstances warrant it or through a proposal approved by the Board of Directors.

SECOND PARAGRAPH. The General Director of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION will attend the meetings of the Board of Directors with the right to speak but without vote.

THIRD PARAGRAPH. The Board of Directors may, exceptionally and due to special circumstances, deliberate and decide remotely through the different means, when immediate simultaneous and successive communication can be provided and guaranteed, and all members of the Board have access to the means used for this kind of meetings. For the final approval of the Agreements that are studied through this mechanism, the members of the Council must have the final text of the same.

ARTICLE 16 . LEGAL REPRESENTATION. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will have a General Director, agent of the President of the Republic of the free appointment and removal of him, who will be the legal representative of the entity.

ARTICLE 17. FUNCTIONS OF THE GENERAL DIRECTOR. The Director General of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will have, in addition to the functions indicated by law, especially Article 78 of Law 489 of 1998, decrees and other current legal provisions the following:

1. Direct the implementation of the policy regarding social action and international technical and financial cooperation of a non-reimbursable nature at the territorial level.

2 Advise the National Government in the formulation of the policy in matters of social action and international cooperation.

3. Direct, coordinate, monitor and control the execution of the functions and programs of the organization and its staff.

4. Render general or periodic and particular reports to the President of the Republic, the director of the Administrative Department of the Presidency of the Republic and other competent authorities on the activities carried out, the general situation of the entity and the measures adopted that may affect the course of government policy.

5. Organize, direct and control the functions of the entity, order the expenses and sign as legal representative the acts, agreements and contracts, for the fulfillment of the objectives and functions assigned to the Entity.

6. Coordinate with the Ministry of Foreign Affairs and diplomatic representations abroad, making contacts with potential contributors of international cooperation.

7. Approve the plans, programs and projects of international technical cooperation or non-reimbursable financial contribution that the country wishes to receive or grant.

8. Manage the Fund for the Comprehensive Attention to the Population Displaced by Violence, the International Cooperation and Assistance Fund, the other funds that are assigned and assets that constitute the patrimony of the entity and control the management of financial resources, so that these are executed in accordance with the established plans and programs and with the organic rules of the national budget.

9. Celebrate, by delegation of the National Government, the contracts referred to in article 355 of the Political Constitution, in accordance with Law 368 of 1997.

10. Authorize the execution and/or coordination of special programs and projects that contribute to averting a situation of social emergency or that require special or immediate attention from the State.

11. Approve the project of the Annual Monthly Cash Program, PAC, of income, expenses, budgetary reserves and accounts payable of the Agency, to be submitted for approval by the Board of Directors of the entity.

12. Submit for the consideration and approval of the Board of Directors the Entity's annual budget draft, its additions and transfers, as well as the Entity's financial statements, in accordance with the legal, organic provisions and regulations on the matter.

13. Direct and control the management of financial resources so that they are executed in accordance with plans, programs and with the organic rules of the National Budget.

14. Direct the implementation of the Quality Management System and continuous improvement in order to guarantee the provision of the entity's services.

15. Promote, program and organize the efficient and rational distribution of donations received in accordance with the guidelines indicated by the National Government.

16. Appoint agents and attorneys-in-fact who represent the entity in judicial and extrajudicial matters for the best defense of the interests of the entity.

17. Know and decide in the second instance the disciplinary processes that are advanced against the public servants of the entity.

18. Appoint and remove the entity's personnel, as well as issue the administrative acts related to the administration of the entity's personnel, in accordance with current regulations.

19. Direct communications and programs to promote the image of the national and international agency.

20. Create and organize by internal resolution and on a permanent or transitory basis, committees and internal working groups to meet the needs of the service, taking into account the plans, programs and projects defined by the Entity.

21. Distribute the positions of the Global Personnel Plant, in accordance with the internal organization, the needs of the entity and the plans and programs drawn up by the entity.

22. The other duties assigned by law.

ARTICLE 18. NAME OF THE ACTS OF THE GENERAL DIRECTOR. The acts or decisions adopted by the Director General, in exercise of the administrative functions assigned to him by law and by the Agreements issued by the Board of Directors, they will be called Resolutions, which will be numbered successively with the indication of the day, month and year in which they are issued. Its conservation and custody will be in charge of the Secretary General of the entity.

ARTICLE 19. POSSESSION OF THE DIRECTORGENERAL. The Director General of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be sworn in before the President of the Republic.

IV. Structure

ARTICLE 20. STRUCTURE. The structure of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be determined by the National Government, subject to current legal provisions and the principles and general rules contained in article 54 of Law 489 of 1998 and meeting the needs of the entity, which will be flexible in such a way that allow the effective and efficient performance of its functions.

V. Personnel regime

ARTICLE21. CLASSIFICATION OF SERVERS. For all legal purposes, the people who provide their services to the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will have the character of public employees and therefore will be subject to the current legal regime for the same.

ARTICLE 22. POSSESSION. The employees of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be sworn in before the Director General or the official to whom he delegates said function.

ARTICLE 23. DISCIPLINARY REGIME. Public employees of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be subject to the only disciplinary regime provided for in Law 734 of 2002 and other regulations that modify, add or replace it.

ARTICLE 24. SALARY AND BENEFITS REGIME. public employees of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be subject to the general system of salaries and benefits that governs this type of employee of the Executive Branch of the Public Power.

VI. Heritage

ARTICLE 25. ASSETS. The assets of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will consist of:

1. The items assigned to it in the General Budget of the Nation.

2. Resources from internal and external credit, prior incorporation into the General Budget of the Nation.

3. Resources from national and international cooperation.

4. Movable and immovable property acquired under any title.

5. Cash donations coming indirectly to the entity prior to incorporation into the national budget, and legally accepted donations in kind.

6. Fixed assets and inventories of the Colombian Agency for International Cooperation - ACCI and the Social Solidarity Network, which are merged by virtue of this Decree.

7. The assets, rights and obligations of the Colombian Agency for International Cooperation - ACCI and the Social Solidarity Network.

8. The resources of the International Cooperation and Assistance Fund.

9. The resources of the Investment Fund for Peace.

10. The appropriate amounts in the General Budget of the Nation for the International Cooperation and Assistance Fund. The total annual minimum amount will be the equivalent of (2,000) legal monthly minimum wages, with an increase in agreement with what was approved by the Congress of the Republic through the General Budget Law of the Nation.

11. Donations that it receives from bilateral and multilateral sources to support cooperation among developing countries, unless those resources correspond to cooperation programs and projects in which the sole beneficiary is Colombia.

12. General resources for triangular operations aimed at cooperation to developing third countries.

13. The other goods and resources that, destined for the Fund for Cooperation and International Assistance, acquired under any title, in accordance with the law.

14. The other goods and resources that are acquired under any title in accordance with the law.

ARTICLE 26. BUDGET REGIME. They will apply to the Presidential Agency for Social Action and International Cooperation- SOCIAL ACTION, the provisions of the Organic Budget Law.

The Director General of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION will be responsible for organizing spending and may delegate to other officials in accordance with legal provisions.in force on the matter.

ARTICLE 27. APPROPRIATIONS BUDGETARY. The appropriations budget allocations for the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be identified according to the nature of the activities and will be classified by programs.

VII. Fiscal control, internal control and administrative control

ARTICLE 28. FISCAL CONTROL. The Office of the Comptroller General of the Republic is responsible for monitoring fiscal control, which will be done subsequently and selectively, in accordance with the procedures, systems and principles established in article 267 of the Political Constitution, Law 42 of 1993 and other provisions that complement, add or modify them.

ARTICLE 29. INTERNAL CONTROL. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will establish the Internal Control System and will design the necessary methods and procedures to guarantee that all activities, as well as the exercise of functions in charge of its servants adhere to the Articles 209 and 269 of the Political Constitution, Law 87 of 1993, and other regulations issued on the subject, subject to the criteria of morality, efficiency, effectiveness, economy, quality and opportunity of services, speed and impartiality.

ARTICLE 30. ADMINISTRATIVE CONTROL. The Director General of the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will take the necessary measures, in order to provide the information and documents required for the effectiveness of the technical inspection visits, administrative, fiscal or judicial order of the competent authority.

VIII. Legal regime of acts and contracts

ARTICLE 31. CONTRACTING REGIME. The contracts entered into by the Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, will be governed by the General Contracting Statute, established in Law 80 of 1993, its regulations and other provisions that add or modify it. Also, by the rules and contracting regulations of multilateral credit organizations or foreign persons of public law or international cooperation, assistance or aid organizations and other donors, in relation to the agreements that they celebrate with them and by the rules of private law in relation to the Investment Fund for Peace - FIP, the Fund for Peace,

Reparation for Victims and the Fund for Comprehensive Care for the Population Displaced by Violence.

ARTICLE 32. COACTIVE JURISDICTION. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION, has coercive jurisdiction to enforce the credits in its favor, in accordance with the regulations established for public entities of the national order, under the terms of article 112 of the Law of 1992 and the regulations that complement, add or modify it.

IX. Validity

ARTICLE 33. VALIDITY. This Agreement is in force as of the date of its publication, it repeals Agreement 043 of 2000 and the provisions that are contrary to it.

PUBLISH, COMMUNICATE AND ENFORCE.

Given in Bogotá, DC, May 8, 2006.

PRESIDENT
Bernardo Moreno Villegas.

THE SECRETARY
Armando Escobar Sanchez.

AGREEMENT 019 OF 2005

(December 5)

WHEREBY THE FUNCTIONING OF THE INTERNATIONAL COOPERATION AND ASSISTANCE FUND –FOCAI– IS REGULATED

THE BOARD OF DIRECTORS

OF THE PRESIDENTIAL AGENCY FOR SOCIAL ACTION AND THE INTERNATIONAL COOPERATION

In use of the powers conferred by article 28 of Decree 2467 of 2005,

CONSIDERING

That Decree 2467 of 2005, which merges the Colombian Agency for International Cooperation, ACCI, to the Social Solidarity Network, RSS, in its article 25 establishes that "the International Cooperation and Assistance Fund, created by Law 318 of 1996, It will function as a special account, without legal status, of the Presidential Agency for Social Action and International Cooperation, Social Action, in order to support non-reimbursable technical and financial cooperation actions and international assistance that Colombia carries out with other developing countries".

that the article 28 of Decree 2467 of 2005, prescribes "the management and destination of the resources of the fund will be defined by the Board of Directors of the Presidential Agency

for Social Action and International Cooperation, Social Action".

That within the functions indicated to the Office of the Director General in article 12 of the afore mentioned decree, are those of "Approve the plans, programs and projects of non-reimbursable international technical or financial cooperation that the country wishes to receive or grant" and " Manage the International Cooperation and Assistance Fund".

That in accordance with articles 20 and 22 ibid, the presentation to the Director General of the programming of activities, plans, and projects to be carried out charged to the resources of the Fund for International Cooperation and Assistance (FOCAI), is assigned to the Directorate of International Cooperation; The Sub-directorate of Official Development Assistance will monitor its implementation and prepare reports on its execution.

AGREES:

ARTICLE 1. NATURE. The International Cooperation and Assistance Fund -FOCAI-, created by Law 318 of 1996, is a special account, without legal status, of the Presidential Agency for Social Action and International Cooperation, Social Action.

ARTICLE 2. OBJECT. The purpose of the International Cooperation and Assistance Fund is to support non-reimbursable technical and financial cooperation actions and international assistance that Colombia carries out with other developing countries.

The resources of the Fund will be used to finance, in accordance with the priorities of foreign policy and national convenience, programs, projects and cooperation activities that Colombia carries out with other countries of similar or lesser degree of development, according to the following definitions:

Non-reimbursable Technical and Financial Cooperation: It consists of the transfer of scientific and technical knowledge and technologies through the training of human resources in modalities such as development projects, studies and research, exchange of experts, internships, courses, workshops, seminars. At the level of Technical Cooperation among Developing Countries (TCPD), these cooperation actions may be carried out with countries with a similar or lower level of relative development.

International Assistance: It is the cooperation provided to those countries that are affected by natural disasters or crises generated by political and/or economic imbalances. This classification considers food aid and the donation of goods to mitigate the impact of disasters. In the case of TCDC, it will be applied primarily to countries with a lower degree of development.

PARAGRAPH: The programs, projects and activities of non-reimbursable technical and financial cooperation and international assistance may be formulated as combinations of the typologies described above. That is, technical cooperation actions complemented by donation of equipment; international assistance actions integrated by modules of technical cooperation, donation of equipment and/or goods, among others.

ARTICLE 3. MEANS. The International Cooperation and Assistance Fund -FOCAI- will have the following resources:

1. The appropriate amounts in the General Budget of the Nation;

2 Donations received in support of TCDC from bilateral and multilateral sources;

3. The resources generated by triangular operations aimed at cooperation towards developing third countries;

4. The other goods and resources that, destined for this Fund, are acquired through any title, in accordance with the law.

PARAGRAPH: The procedures for input and output of resources of the Fund will be defined by Social Action in accordance with the law.

ARTICLE 4. ACCOUNTING. FOCAI will have its own accounts, where the execution of the allocated budget will be recorded.

ARTICLE 5. DESTINATION. The resources of the International Cooperation and Assistance Fund -FOCAI- will be used to cover the expenses incurred in the execution of non-reimbursable technical and financial cooperation programs, projects and activities that Colombia carries out with other developing countries and international assistance to other developing countries, included in the modalities of development projects, studies and research, internships, exchange of experts, training, courses, workshops and seminars, donations, food aid, support in prevention and response to disasters and other crises of nature political and economic.

Such modalities will cause expenses such as accommodation and meals for national and foreign personnel, hiring of experts, international and national transportation for national or foreign personnel, national and international transportation of goods, airport taxes and other charges for national or foreign personnel, insurance. doctors for foreign and national personnel, purchases and supplies, preparation of printed matter and publications, communication and information services and organization of events (rentals, translation services, among others).

PARAGRAPH 1. For the financing of international assistance actions, a maximum of 30% of the total resources available in the Fund may be made available each year, which should be applied primarily in countries with a lower degree of development. The Board of Directors may approve extensions of the afore mentioned percentage at the reasoned request of the Directorate of Social Action.

PARAGRAPH 2. Each international assistance action may not exceed 25% of the resources earmarked for that purpose. Exceptionally, in the event that the costs of the action exceed the established limits and that it represents a high political priority for the country, the Director of Social Action must consult the members of the Board of Directors.

PARAGRAPH 3. Financing of non-reimbursable technical and financial cooperation programs, projects and activities that Colombia allocated to countries of similar or lesser relative development.

ARTICLE 6. ASSESSMENT CRITERIA FOR PROGRAMS, PROJECTS *AND ACTIVITIES*. For the analysis of the viability of the TCDC programs, projects and activities that are intended to be financed with FOCAI resources, the viability criteria for international cooperation, methodological and technical feasibility, as follows:

CRITERIAOF VIABILITY FOR INTERNATIONAL COOPERATION. The feasibility criteria for TCDC are as follows:

1. TCDC applications must promote and facilitate technical, scientific and technological transfer or exchange between developing countries. In this sense, it will be observed that they help to the contribution of new knowledge and experiences to the plaintiff.

2. The requested support must be directed mainly to technical assistance, training and coaching.

3. For the financing of activities, the criteria of shared costs governs, according to which the country that sends officials covers the costs of international transportation, materials and tools (if necessary) and the country that receives them pays for lodging and food, national transportation, materials and tools (if necessary) and, eventually, health and life insurance.

4. The requesting entities (domestic or foreign) must have the technical, financial and operational capacity to carry out the activity, as well as for the management and institutional use of the knowledge generated.

5. Must avoid duplication of efforts in similar activities carried out within the requesting country.

6. The requesting entity must guarantee the financing of the logistics for the development of activities leading to the achievement of objectives.

METHODOLOGICAL CRITERIA. In the study and assessment of the activities of TCDC will take into account the following methodological criteria:

1. The institutions requesting cooperation (national or foreign) must formulate their TCDC activities in the Form for the Formulation of Requests for Cooperation CTPD, designed for this purpose.

2. The activities must be sufficiently justified and adequately formulated. Its approach must be concise and clear, maintaining coherence in all developed points.

TECHNICAL FEASIBILITY CRITERIA. In the study and assessment of activities of TCDC the technical feasibility criteria are the following:

1. In the formulation of TCDC activities, their relationship with the development priorities of the requesting country (be it Colombia or a foreign country).

2. The results proposed in the proposal must be achievable in time of execution.

3. The possibility of replication must be clearly included of the experience received as well as its sustainability at the institutional level.

ARTICLE 7. RESOURCE ALLOCATION CRITERIA. For the execution of TCDC activities that Colombia wishes to carry out with other developing countries, the following resource allocation criteria must be followed:

1. The counterpart of the Colombian entities may be financed to guarantee the execution of activities, projects and programs, previously approved by Social Action, within the framework of Mixed Cooperation Commissions, Binational Commissions, Bilateral Work Meetings and Cooperation Agreements.

2 All the costs could be financed (national and requesting country counterpart), for the execution of activities, projects and programs previously approved by Social Action, within the framework of Mixed Cooperation Commissions, Binational Commissions, Bilateral Work Meetings and Agreements. of Cooperation, prior study of national convenience and foreign policy priorities.

3. The support of Colombia can be provided by a state entity, NGO or private entity.

4. Experts may be hired, in those cases in which it is required to guarantee the execution of the activity or project and this is only possible through the payment of fees.

5. The number of technicians and experts to be financed must not exceed three for each activity, with the exception of those programs directed by Colombia to countries of interest on specific topics (Spanish courses, seminars, courses).

6. The duration of each activity may not exceed 20 business days.

7. The allocation of travel allowances will be defined in accordance with the tables that for this purpose it has the Administrative Department of the Public Function.

8. Support may be given to national counterparties which, in the case of triangular cooperation are required.

ARTICLE 8. REQUIREMENTS. The following will be the necessary requirements for access to the resources from the International Cooperation and Assistance Fund
-FOCAI-:

1. The request must be submitted in writing by the respective government, agency multilateral or national entity.

2 New TCDC activities may be supported for the same entity, government or multilateral organization, once the corresponding execution reports of the supported activities are submitted in a timely manner, in accordance with the guide provided by Social Action.

ARTICLE 9. MANAGEMENT. All or part of the FOCAI resources may be administered by Fonade. If necessary, the Director of Social Action, with the prior authorization of the Board of Directors, will enter into agreements or contracts with other institutions, with this same purpose, in the terms that point out the law.

ARTICLE 10. MANAGEMENT. The Director General of the Presidential Agency for Social Action and International Cooperation, Social Action, will be the organizer of the expenditure of the fund's resources and will be in charge of the execution and control of the contracts and agreements entered into with them, who may delegate these powers, in accordance with the provisions of the law.

ARTICLE 11. Given that the international assistance that Colombia will provide is related to emergency situations the Director General of the Presidential Agency for Social Action and International Cooperation is empowered to approve such actions, once requested in writing by the Minister of Foreign Affairs or the Vice Minister of Multilateral Affairs of the Ministry of Foreign Affairs, or by the Director of the Administrative Department of the Presidency of the Republic. The General Director of Social Action must inform the Directive Council

on tasks advanced in this field.

ARTICLE 12. CONTROLS. Management control of FOCAI will be exercised by the Board of Directors of Social Action, based on the six-monthly reports submitted by the Director General. Fiscal control will be exercised by the Office of the Comptroller General of the Republic, in accordance with current regulations on this matter.

ARTICLE 13. This Agreement is effective as of its publication.

COMMUNICATE AND ENFORCE

Given in Bogotá, DC, to

BERNARDO MORENO VILLEGAS
Executive President Council

ARMANDO ESCOBAR SANCHEZ
Secretary

Directives
Presidential

PRESIDENTIAL DIRECTIVE No. 11 OF 2002

FOR: VICE PRESIDENT OF THE REPUBLIC, MINISTERS OFFICE, DIRECTORS OF THE APARTMENTS ADMINISTRATIVE AND MANAGING DIRECTORS AND PRESIDENTS OF CENTRALIZED AND DECENTRALIZED ENTITIES OF THE NATIONAL ORDER.

OF: PRESIDENT OF THE REPUBLIC.

SUBJECT: COMMISSIONS ABROAD.

DATE: Bogota, DC, September 6, 2002

GENERAL CONSIDERATIONS

The execution of The General Budget of the Nation, as well as all public resources, must be governed by principles of efficiency and geared towards achieving the state purposes.

Commissions for services abroad imply a high cost for the State and therefore it is necessary to apply an austerity criterion so that the effort that trips abroad imply for the treasury is fully justified for the State.

Therefore, precise instructions are given to the recipients of this directive regarding commissions abroad:

INSTRUCTIONS

1. The instructions for accepting invitations from foreign governments or entities will only be processed when they do not imply costs for the treasury and are essential and convenient for the country, which must be fully justified.

2. The studies and services commissions abroad must be limited to what is really urgent, essential and convenient for the country, a fact that must be fully justified.

3. The Secretary General of the Presidency of the Republic must grant prior authorization for any commission for studies or services outside the country that is intended to be granted with resources from the national budget. This authorization is a requirement for the issuance of administrative acts related to commissions abroad.

4. Draft decrees or requests for prior authorization that do not fit the above, will not be received.

5. The Ministers and Directors of the Administrative Department will give the necessary guidelines so that the entities of the respective sector give compliance with the provisions of this directive.

DIRECTIVE PRESIDENTIAL 01 OF 2007

FOR: MINISTERS OFFICE, VICE MINISTERS, DIRECTORS OF ADMINISTRATIVE DEPARTMENTS, DIRECTORS OF DECENTRALIZED ENTITIES OF THE NATIONAL LEVEL, PRESIDENTIAL ADVISORS, GOVERNORS, MAYORS, DIRECTORS OF DECENTRALIZED ENTITIES OF THE DEPARTMENTAL AND MUNICIPAL LEVELS, HEADS OF PRESS OFFICES AND PUBLIC SERVANTS.

SUBJECT: PROCEDURES FOR THE MANAGEMENT OF INTERNATIONAL RELATIONS AND FOR PUBLIC DECLARATIONS RELATED TO THE FOREIGN POLICY OF COLOMBIA.

Date: Bogota, DC, January 17, 2007

In development of the faculty of direction of the international relations of the State that grants article 189, numeral 2 of the Political Constitution and in accordance with Decree-law 110 of 2004, in particular article 3, the following are issued instructions:

1. The official position of the Government of Colombia in terms of International Relations, it can only be set by the President of the Republic and by the Minister of Foreign Affairs, under the direction of the Head of State in accordance with the provisions of current regulations.

2. Public officials shall refrain from making statements, setting positions or publicly express opinions that compromise the country's relations with other States or in general the foreign policy of Colombia.

3. The Ministry of Foreign Affairs will grant the prior concept for the negotiation and celebration of any international agreement, without prejudice to the constitutional powers of the Head of State in the direction of the international relations.

DIRECTIVE PRESIDENTIALNº01 OF2008

FOR: MINISTERS OF OFFICE, VICE MINISTERS, ADMINISTRATIVE DEPARTMENT DIRECTORS, SUPERINTENDENTS, DIRECTORS, MANAGERS AND PRESIDENTS OF CENTRALIZED AND DECENTRALIZED ENTITIES OF THE EXECUTIVE BRANCH AT THE NATIONAL LEVEL, PRESIDENTIAL ADVISERS AND PUBLIC SERVERS.

OF: PRESIDENT OF THE REPUBLIC

AFFAIR: INTERNATIONAL COOPERATION COORDINATION

Date: Bogota, DC, January 29, 2008

In order to improve the coordination, harmonization, and impact of the international aid received by the country and to comply with the priorities established in the International Cooperation Strategy 2007-2010, the Presidential Agency for Social Action and International Cooperation - Social Action, in coordination with the Ministry of Foreign Affairs, are the State entities, in charge of coordinating the development of international cooperation policy.

Social action will be the in charge of manage, promote Y articulate with donors and recipients public and private international cooperation, the non-reimbursable technical and financial cooperation received and granted by the country, as well as the resources obtained as a result of the cancellation of debt with a social or environmental nature. Likewise, it coordinates the identification of priority areas and issues at the national and regional level towards which international cooperation should be directed, as well as those experiences and national capacities to be offered in cooperation abroad.

The entities of the national order will carry out the management of their cooperation initiatives, considering the parameters established by Social Action, which assumes the Coordination of the implementation of the Paris Declaration; Likewise, they will direct all their efforts and management of international cooperation, towards the execution of programs, projects and activities closely related to the three priority areas in the Cooperation Strategy 2007-2010. The diplomatic missions of Colombia abroad will inform Social Action and the Ministry of Foreign Affairs of the management of potential cooperation initiatives of benefit to the country.

The organizations and entities of the territorial order may participate in the processes and activities within the framework of the Implementation Plan of the Paris Declaration, in order to fulfill the national commitments that derive as a result of adherence to it.

ALVARO URIBE VELEZ

Rules
recruitment

SUBSECTION 4 OF ARTICLE 13 OF LAW 80 OF 1993

"Contracts financed with funds from multilateral credit organizations or entered into with foreign persons under public law or international cooperation, assistance or aid organizations, may be subject to the regulations of such entities in everything related to formation and award procedures and clauses of special execution, compliance, payment and adjustments".

DECREE 2166 OF 2004

(July 7)

(Repealed by Decree 66 of 2008)

THROUGH WHICH DECREE 1896 OF 2004 IS MODIFIED AND PARTIALLY REGULATED ARTICLE 13 OF LAW 80 OF 1993

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

in exercise of its legal and constitutional powers, especially those conferred by numeral 11 of article 189 of the Political Constitution

DECREES:

Article 1. Article 1 of Decree 1896 of 2004 will read as follows:

Contracts or agreements financed with resources from loans and donations entered into with multilateral credit organizations, foreign persons under public law or international cooperation, assistance or aid organizations, may be subject to the regulations of such entities in everything related to formation procedures, adjudication and special clauses of execution, compliance, payment and adjustments.

The same treatment will be given to the counterpart resources linked to these operations.

Article 2. The contracts or agreements entered into with international cooperation, assistance or aid organizations supported by international cooperation instruments of which the Nation is a part, for the fulfillment of cooperation and technical assistance objectives, may be subject to the regulations of such organizations in all matters related to training procedures, adjudication and special clauses of execution, fulfillment, payment and adjustments.

The foregoing without prejudice to contracts with foreign persons in public law that will be held and executed as agreed between the parties.

Paragraph. Those whose object is the administration of resources shall not be understood as international cooperation and technical assistance contracts or agreements.

Article 3. Transient. The contracts or agreements whose object is the administration of resources entered into with international cooperation, assistance or aid organizations prior to March 17, 2004, as well as the contracts that are signed in development of these, will continue to be governed until their termination by the regulations of such entities, in everything related to formation and adjudication procedures and special clauses of execution, compliance, payment and adjustments.

The contracts or agreements for the administration of resources entered into with international cooperation, assistance or aid organizations prior to March 17, 2004, will continue to be executed in the terms initially agreed until the fulfillment of their purpose and may not be added in resources.

Article 4. This decree shall enter into force as of the date of its publication.

PUBLISH AND ENFORCE

Given in Bogotá, DC, to

THE MINISTER OF THE INTERIOR AND OF

JUSTICE

THE MINISTER OF TRANSPORT

THE DIRECTOR OF THE NATIONAL PLANNING DEPARTMENT

BILL 20 OF 2005. COMMISSION I, SENATE. APPROVED IN FIRST DEBATE IN DECEMBER 2005

WE TRANSCRIBED THE RELATED TEXTWITH SUBSECTION 4 OF ARTICLE 13 OF LAW 80 OF 1993

“Article 17. Contracts financed with funds from multilateral credit organizations, foreign persons governed by public law, foreign government entities or international cooperation, assistance or aid organizations

may submit to the regulations of such entities. The same treatment will be given to the counterpart resources linked to these operations.

State entities may not enter into contracts for the administration of their own resources or those assigned to them by public budgets, with cooperation agencies, assistance or international aid.

The contracts referred to in this article shall be subject to surveillance of the control organisms.

Paragraph 1. The contracts or agreements entered into with international cooperation, assistance or aid organizations, supported by international cooperation instruments of which the Nation is a part, for the fulfillment of cooperation and technical assistance objectives, may be subject to the regulations of such organizations. The same treatment will be given to those held with foreign persons under public law. The contracts referred to in this paragraph are the prohibition of paragraph 2 of this article applies.

2nd paragraph. In all cooperation projects that involve state resources, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity, must be quantified in national currency. The comptroller's office, in the exercise of fiscal control, will verify that each cooperation project has the respective accounting supports and that the goods and resources resulting from it are given the appropriate fiscal management in compliance with the accounting, missionary and budgetary norms of Colombia".

Appreciations on the Bill.

In order to contribute to the usefulness and clarity of the projected reform, in relation to the previous text, Social Action presented the following assessments to the Ministry of the Interior and Justice, the Ministry of Foreign Affairs and the National Planning Department, considering the pronouncement of the H. Constitutional Court, Judgment 249 of 2004 and Decree 2166 of that same year.

1. What is subject to regulation by paragraph 1 of article 17 are the " financed contracts", not the "agreements or contracts concluded", which are two totally different situations. It is considered that the wording contained in said paragraph is correct, since it harmonizes what is established in the current paragraph 4, with what was stated by the H. Constitutional Court in Judgment C-294 of 2004[118], since it leaves in the past the legal discussion whether it was only a matter of allowing the application of the contracting regime of the cooperators to the contracts "concluded" with cooperators, like today it is established in section 4 or those financed by them. The text proposed in the bill is correct, except for the final expression "The same treatment will be given to the counterpart resources linked to these operations", given that it is a repetition of the text of Decree 2166 of 2004, which refers to the event in that these resources are in the hands of a cooperating third party, because if they remain in public entities, the Public Administration Contracting Statute must be applied. Otherwise, the interpretation given to the rule by the Constitutional Court would not be observed.

118 Judgment C-294of 2004: "... Now, as the Fiscal Hearing correctly expresses, the fourth paragraph of the challenged article entails a special contracting precept, which by virtue of the same Law 80 of 1993 allows the non-application of the Public Contracting Statute in the hypothesis of contracts related to funds received from multilateral credit organizations or entered into with foreign persons of public law or international cooperation, assistance or aid organization. Which finds justification in the fact that Colombia is part of these international organizations, such as the IMF or the IDB, and by being part of them it can accept their statutes and contracting regime in compliance with agreements, treaties and resolutions of supranational entities in which the country has actively participated,

It is observed that in the project of Law 20 of 2005 the expression was suppressed: "The same treatment will be given to the contracts financed with resources of concessional credits", which was the object of discussion and approval in the debates of Bill 035 of 2004, combined with the 83 and 86 Chamber - 2004, which we propose to include again given the legal clarity that is required in relation to this issue as well.

2. The third paragraph of the bill, as far as it concerns cooperation resources executed by Colombian public entities, is absolutely pertinent, since this class of resources, due to the nature of the executor and being money for the government, cannot be left out. of the orbit of the control of the Comptroller General, which by Constitutional mandate must exercise it over the resources of the public treasury, within them those of international cooperation, which must be incorporated into the general budget of the Nation, in accordance with reiterated concepts of the Council of State and the General Directorate of the Budget of the Ministry of Finance and Public Credit.

3. Paragraph 1 should be one more paragraph, that is, the 5th, and obeys the wording studied and agreed between the Legal Offices of the Ministry and ACCI, at the time, for agreements or contracts entered into under the orbit of international law instruments.

   In relation to the final section of this paragraph, we consider it correct to allow the application of the provisions of the same, for those celebrated with foreign persons of public law and not restrict it to the subjects of international law - states and international organizations-.

4. The second paragraph is correct, given that it is about accounting for the cooperation resources received by the country and it is healthy to the extent that not only money but also cooperation in kind must be accounted for and registered by public entities and under its parameters, without prejudice to compliance with the accounting statements and financial reports that the cooperation agreements contemplate.

5. In relation to the request of Senator Vargas Lleras, pertaining to obtaining an explanation or detail of the cases in which the provisions would operate in the 1st paragraph, it is about not applying the national rule to contracts or agreements entered into with other States or with International Organizations, when these are in development of other agreements or treaties of the nature of international law. By way of example, the donation agreements signed by the Ministry of Foreign Affairs with USAID, in development of the "General Agreement for Economic, Technical and Related Aid" of 1962, signed with the United States of America; with the Delegation of the European Community in application of the "Framework Agreement on the execution of financial and technical assistance and economic cooperation in the Republic of Colombia by virtue of the ALA regulation" of the year 2000; the agreements derived from the Agreement of April 29, 1969 for the provision of aid by the WFP signed between the Government of Colombia and the World Food Program, by virtue of which all food aid operations with said cooperant are supported; the agreements signed between public entities and the United Nations Development Program, UNDP, for the execution of projects of true international cooperation, in which the UNDP contributes resources of

non-reimbursable cooperation, in development of the Agreement between the Government of Colombia and the United Nations Development Program in May 1974.

These agreements or contracts - agreements that generate obligations are the result of very particular negotiation processes that exist with each cooperator and differ from the legal nature of service contracts, acquisitions or works or civil or commercial contracts that regulate the internal law of each country. The nature of the agreements referred to in paragraph 1 is very different. No public entity or State carries out a public bidding or bidding process to obtain international cooperation resources; its celebration, legalization and execution obey the very nature of the intervening parties and the agreed object; could not be subject to the national standard. In the form of celebration, they do not carry clauses of expiration, interpretation, modification and unilateral termination, penal clause, guarantees; in its legalization, stamp taxes, VAT since a service is not bought or sold (technical and/or financial cooperation is agreed upon and received); the same in its execution; in cooperation agreements that implicitly imply a donation, the "insinuation" procedure established in the national standard is not required for its acceptance; said agreements are not published in the Single Contracting Gazette; The litigations that arise on the occasion of the same cannot be submitted to the national jurisdiction, since they are States and International Organizations, whose jurisdiction is that of the subjects of international law, contemplated in the treaties that govern relations with said entities. . the same in its execution; in cooperation agreements that implicitly imply a donation, the "insinuation" procedure established in the national standard is not required for its acceptance; said agreements are not published in the Single Contracting Gazette; The litigations that arise on the occasion of the same cannot be submitted to the national jurisdiction, since they are States and International Organizations, whose jurisdiction is that of the subjects of international law, contemplated in the treaties that govern relations with said entities.

6. In relation to the second paragraph of article 17 of the bill, it is a political decision, which prevents the possibility of entering into such agreements or contracts for the administration of resources with international organizations. The spirit of the legislator must be consulted, in the sense of establishing if what he intends is such a prohibition or if what he really wants to be subject to regulation is the issue of which contracting rule these should apply international entities, when they play a role of administrators of own resources of public entities or of the General Budget of the Nation. Because this is the issue that has been the subject of controversy, which was examined by the H. Constitutional Court. In other words, the normative context of the subject object of regulation should not be lost sight of, that is, when a different standard to the national one can be applied (paragraph 4 of article 13 of Law 80 of 1993). The discussion that has arisen is in relation to the norm that administrators, without distinguishing whether they are national or international, must apply in the contracts that they celebrate with resources from national sources. In this

119 Judgment C-249 of 2004, in relation to subsection 4, Art. 13, Law 80 of 1993: "... As can be inferred, from the point of view of resources linked to state contracting, this subsection refers **with exclusiveness** to revenue received by the Public Treasury from international entities or organizations. Therefore, this subsection is entirely inapplicable, in relation to those contracts relating to resources from the General Budget of the Nation or territorial budgets, when such resourcesdo not correspond to donations or loans. So, by example, this paragraph is inapplicable in relation to state resource management contracts that the competent authorities have not appraised legally by way of donation or loan. For the Therefore, by saying the rule that the respective contracts '**(...) may be subject to the regulations of such entities in everything related to formation and execution procedures and special clauses of execution, compliance, payment and adjustments**'. Such discretion can only be assumed, and therefore validly exercised, within the precise limits of the contracts related to resources received from international entities or organizations, which usually occurs as a loan or donation. For this reason, any interpretation to the contrary of the subparagraph in question, could only lead to a budget execution that is alien to the achievement of the State's purposes...".

regard, the Honorable Constitutional Court[119] has stated that the prerogative contained in the afore mentioned 4th paragraph refers to contracts financed with loan or donation resources and cannot be extended to national source resources, in which case it would then suffice to leave a rule that expressly establishes that the contracts that in the development of management agreements or contracts are celebrated by the administrators, will be subject to the provisions of the General Statute of Contracting of the Public Administration, as established in article 32 of Law 80, in relation to the trust agreement and the trust commission.

BILL 057 OF 2006 CAMERA – 20 OF 2005 SENATE. PASSED IN JUNE 2007

(WE TRANSCRIBED THE TEXT RELATED TO SUBSECTION 4 OF THE ARTICLE 13 OF LAW 80 OF 1993).

Assorted debates before the House of Representatives, the text that brought the Project of Law 20 of 2005 - Senate was as follows:

"On contracting with international organizations. Contracts or agreements financed in full or in amounts equal to or greater than fifty percent (50%) with funds from multilateral credit organizations, foreign persons of public law, foreign government entities or international cooperation, assistance or aid agencies, may submit to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations can have the same treatment.

State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies.

Paragraph 1. The state entities will have the obligation to report the information related to the execution of the contracts referred to in this article.

2nd paragraph. In all cooperation projects that involve state resources, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity, must be quantified in national currency. The comptrollers will exercise fiscal control over the projects and contracts entered into with multilateral organizations.

About this text, SOCIAL ACTION also had chance of express to the H. Speaker Representatives, from the perspective of matters related to the promotion and coordination of international cooperation, the missional object of SOCIAL ACTION:

1. The Presidential Agency for Social Action and International Cooperation - SOCIAL ACTION has as its primary objective, established in the Decree 2467 of 2005, coordinate, manage and execute programs of social action aimed at the poor and vulnerable population and development projects, coordinating and promoting national and international cooperation, technical and non-reimbursable financial aid that the country receives and grants.

Among the functions established in article 6, we consider important to highlight the following:

a) Coordinate the development of the policy that in terms of cooperation the Ministry of Foreign Affairs sets.

b) Manage and promote non-reimbursable international technical and financial cooperation under the direction and coordination of the Ministry of Foreign Affairs.

c) Execute, within its competence, the programs of the targeted social investment policy defined by the President of the Republic, contemplated in the Law of the National Development Plan, aimed at the poorest and most vulnerable sectors of the Colombian population.

d) Coordinate and articulate with the potential contributors and recipients of international public and private cooperation, the non-reimbursable technical and financial cooperation that the country receives and grants, as well as the resources obtained as a result of the cancellation of debt with a social or environmental nature.

e) Support the Ministry of Foreign Affairs in the negotiation processes of framework agreements, treaties or conventions on cooperation and complementary international cooperation agreements or conventions, non-refundable technical or financial

f) Manage the resources, plans, programs and projects of non-reimbursable international technical and financial cooperation or private cooperation carried out by the country, when appropriate, under the guidelines that the Ministry of Foreign Affairs imparts.

g) Promote the improvement of the living conditions of the poorest and most vulnerable population of the country, through the coordination and execution of programs and projects with resources from national or international cooperation sources, in accordance with the policy determined by the National Government.

2 It is important to keep the distinction between:

- International Cooperation and,

- Administration of resources by international organizations.

For this purpose, it is important to keep in mind the concept of International Cooperation:

International Cooperation is understood as joint action to support economic and social development of the country, through the transfer of technologies, knowledge, experiences or resources by countries with the same or higher level of development, multilateral organizations, non-governmental organizations and civil society. It is also known as development cooperation and is a global concept that comprehends different aid modalities that flow to relatively less developed countries.

International Cooperation is carried out through various modalities, among which are technical, scientific and technological cooperation; non-reimbursable financial cooperation; reimbursable financial cooperation

or concessional; donations; humanitarian action; cultural cooperation and educational; political cooperation, and military cooperation.

It is based on the principles of international solidarity, co-responsibility, partner work, mutual interest, sustainability, equity and efficiency[120].

3. In this sense, the inclusion of financing percentages in the agreements or contracts for purposes of determining the applicable law, is alien to the uses and the way in which international cooperation has been executed and ignores the will of the donor regarding the application of its regulations to the resources it contributes to the country.

4. International cooperation has the character of international cooperation, regardless of their percentage of participation in a project.

5. The application of the provisions of the International Treaties is left aside, for the cases in which they are commitments acquired by the Colombian Government in development of the Agreements or Framework Treaties, which with the States or International Organizations have been signed in some of them, the application of the donor rule is expressly established regardless of the percentage of their participation in the operation of cooperation.

6. This particular, that is, the execution of international cooperation resources under the regulations of the donor or cooperator, has been the object of special analysis and there is considerable clarity about it, even more so with the pronouncement of the Constitutional Court contained in Judgment C -294 of 2004. On the occasion of this statement and those of the control agencies, Decree 2166 of 2004 was issued, which regulates this issue.

7. The wording could even be worrying too for the cases of loans, in which the rule v. gr., IDB or World Bank, regardless of their participation in the projects that are financed with their resources.

8. It is important that the legislative effort is oriented towards what has been the subject of concern for the Government and the control organisms. This is the delivery of public resources to international organizations to mere administration and execution; to carry out contracting and payment activities, which are in the capacity and duty to carry out by public entities.

9. In this sense, if the intention of the legislator is not to allow international organizations to administer public resources, then this prohibition should be, and only this, the one that remains express in the text of the law amending Law 80, without entering into regulating aspects related to international cooperation, for which there is an express rule and clear jurisprudence. (Subsection 4th article 13 of Law 80 and regulated by Decree 2166 of 2004[121], Judgment C-294 of 2004).

10. If you want to raise the aspects regulated by Decree 2166 of 2004 to legal status, you should

120 Concept adopted by the Directorate of International Cooperation of Social Action, based on the definition of the OECD and derived from the International Cooperation Treaties and Agreements that the National Government has signed.

121 Article 1. Article 1 of Decree 1896 of 2004 will read as follows:

Contracts or agreements financed with resources from loans and donations entered into with multilateral credit organizations, foreign persons of public law or international cooperation, assistance or aid organizations, may be subject to the regulations of such entities in everything related to formation procedures, adjudication and special clauses of execution, fulfillment, payment and adjustments.

The same treatment will be given to the counterpart resources linked to these operations.

Article 2. The contracts or agreements entered into with international cooperation, assistance or aid organizations supported by international cooperation instruments of which the Nation is a part, for the fulfillment of cooperation and technical assistance objectives, may be subject to the regulations of such organizations in all matters related to formation procedures, adjudication and special clauses of execution, fulfillment, payment and adjustments.

The foregoing without prejudice to contracts with foreign persons of public law that will be held and executed as agreed between the parties.

Paragraph. They will not be understood as contracts or cooperation agreements and international technical assistance those whose purpose is the administration of resources.

keep the text that it contemplates and that was the object of consensus with control organisms and especially with Ministries that were very interested, such as Defense and of course in which the DNP, the Legal Secretariat of the Presidency, the Ministry of Foreign Relations and SOCIAL ACTION.

In relation to the consultation of the Chamber of Representatives on contracts or agreements entered into with international entities, supported by international cooperation instruments of which the Nation is a part for the fulfillment of cooperation and technical assistance objectives, and that generate benefits for the country, it should be stated that these are those celebrated with other States, public entities of the same or with International Organizations, when these are in development of other agreements or treaties of the nature of international law.

By way of example, the donation agreements signed by the Ministry of Foreign Affairs with USAID, in development of the "General Agreement for Economic, Technical and Related Aid" of 1962, entered into with the United States of America; with the Delegation of the European Community in application of the "Framework Agreement on the execution of financial and technical assistance and economic cooperation in the Republic of Colombia by virtue of the ALA regulation" of the year 2000; the agreements derived from the Basic Agreement of April 29, 1969 for the provision of aid by the WFP signed between the Government of Colombia and the World Food Program, by virtue of which all food aid operations with said cooperant are supported; the agreements signed between public entities and the United Nations Development Program - UNDP, for the execution of international cooperation projects, in which the UNDP contributes its expertise,

Keeping in harmony with the foregoing, we respectfully submit to the consideration of the Honorable Representatives, the substitute proposals, which are found in an attached document and which observe the spirit of the work meetings that have been held with officials from the Ministry of Foreign Affairs, the Legal Secretariat of the Presidency, the National Planning Department, the Ministries of Social Protection, National Education, Defense and SOCIAL ACTION.

(Substitute proposal for Bill 057 of 2006 Chamber - 20 of 2005 Senate)

Bill 057 of 2006 Chamber - 20 of 2005 Senate	Substitute 1 under the terms of Decree 2166 of 2004
Article 20. Contracting with international organizations. Contracts or agreements financed in full or in amounts equal to or greater than fifty percent (50%) with funds from multilateral credit organizations, foreign persons of public law, foreign government entities or international cooperation, assistance or aid agencies, may submit to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment. State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies.	Article 20. Contracting with international entities. State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies. Failure to comply with this prohibition constitutes a very serious offense, punishable in accordance with the current disciplinary regime. Contracts or agreements financed with resources from loans and donations entered into with multilateral credit organizations, foreign persons of public law or international cooperation, assistance or aid organizations, may be subject to the regulations of such entities in everything related to formation procedures, adjudication and special clauses of execution, fulfillment, payment and adjustments. The same treatment will be given to the counterpart resources linked to these operations. Article 2. The contracts or agreements entered into with organizations of international cooperation, assistance or aid supported by international cooperation instruments of which the Nation is a part, for the fulfillment of cooperation and technical assistance objectives, may be subject to the regulations of such organizations in everything related to training procedures, adjudication and special clauses of execution, fulfillment, payment and adjustments. The foregoing is without prejudice to contracts with foreign persons governed by public law that will be entered into and executed as agreed between the parties.
Paragraph 1. The state entities will have the obligation to report the information related to the execution of the contracts referred to in the present article. 2nd paragraph. In any cooperation project that involves State resources must be quantified in national currency, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity. The comptroller's offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations.	Paragraph 1. The state entities will have the obligation to report the information related to the execution of the contracts referred to in the present article. 2nd paragraph. In any cooperation project that involves State resources must be quantified in national currency, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity. The comptroller offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations, through the public entities that have entered into them.

Bill 057 of 2006 Chamber – 20 of 2005 Senate	Substitute 2
Article 20. Contracting with international organizations. Contracts or agreements financed in full or in amounts equal to or greater than fifty percent (50%) with funds from multilateral credit organizations, foreign persons of public law, foreign government entities or international cooperation, assistance or aid agencies, may submit to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment. State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies. Paragraph 1. The state entities will have the obligation to report the information related to the execution of contracts referred to in this article. 2nd paragraph. In any cooperation project involving state resources must be quantified in national currency, the contribute in species of the cooperating entity, organization or person, as well as those of the Colombian national entity. The comptroller's offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations.	Article 20. Contracting with international entities. State entities will not be able to celebrate contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies. Failure to comply with this prohibition constitutes a very serious offence, punishable in accordance with the current disciplinary regime. Contracts or agreements financed with funds from multilateral credit organizations, international organizations and foreign government entities, foreign persons governed by public law or international cooperation, assistance or aid organizations may be subject to the regulations of such entities. The counterpart resources linked to such operations may have the same treatment. In the case of agreements or contracts with foreign persons of public law, the rules of celebration and execution will be agreed between the parties. Paragraph1st. The state entities will have the obligation to report the information related to the execution of the contracts to which the present article refers. 2nd paragraph. In any cooperation project that involves state resources, the contributions in kind of the entity, organization or person must be quantified in national currency, as well as those of the Colombian national entity. The comptroller offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations, through the public entities that have entered into them.

Bill 057 of 2006 Chamber - 20 of 2005 Senate	Substitute 3
Article 20. Contracting with international organizations. Contracts or agreements financed in full or in amounts equal to or greater than fifty percent (50%) with funds from multilateral credit organizations, foreign persons of public law, foreign government entities or international cooperation, assistance or aid agencies, may submit to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993. The counterpart resources linked to these operations may have the same treatment. State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies.	Article 20. Contracting with international entities. State entities may not enter into contracts or agreements for the administration or management of their own resources or those assigned to them by public budgets, with cooperation, assistance or international aid agencies. Failure to comply with this prohibition constitutes a very serious offence, punishable in accordance with the current disciplinary regime. Contracts or agreements financed with funds from multilateral credit organizations and foreign government entities may be subject to the regulations of such entities. The counterpart resources linked to such operations can have the same treatment. Contracts or agreements financed in their entirety or in amounts equal to or greater than twenty percent (20%) with funds from international cooperation, assistance or aid agencies, may be subject to the regulations of such entities. Otherwise, they will be subject to the provisions of Law 80 of 1993. Notwithstanding the foregoing, the regulation may establish the cases in which the aforementioned percentage may be dispensed with, when the object of the contracts or agreements is referred to the development of objectives specific to social investment, development projects, or care for the unsatisfied basic needs of the population, provided that the benefit received is economically quantifiable. Likewise, these percentages will not be considered. In the case of agreements or contracts with foreign persons of public law, the rules of celebration and execution will be agreed between the parties.
Paragraph 1. The state entities will have the obligation to report the information related to the execution of the contracts referred to in the resent article. 2nd paragraph. In any cooperation project that involves contributions in kind from the cooperating entity, organization or person, as well as those from the Colombian national entity, must be quantified in national currency. The comptroller's offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations.	Paragraph 1. The state entities will have the obligation to report the information related to the execution of the contracts referred to in the present article. 2nd paragraph. In any cooperation project that involves State resources must be quantified in national currency, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity. The comptroller offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations, through the public entities that have entered into them.

The National Planning Department presented the following text as a substitute:

"Article 20. Contracting with international organizations. Contracts or agreements financed in full or in amounts equal to or greater than fifty percent (50%) with funds from international cooperation, assistance or aid agencies, together with the counterpart resources linked to these operations, may be subject to the regulations of such entities. Otherwise, they will be subject to the procedures established in Law 80 of 1993.

State entities may not enter into contracts or agreements for the administration or management of public resources, with international assistance or aid cooperation agencies.

Contracts or agreements financed with funds from multilateral credit organizations and foreign government entities may be subject to the regulations of such entities. The counterpart resources linked to these operations can have the same treatment.

Paragraph 1. In the case of public law agreements or contracts with foreign persons for the defense sector, the rules of execution and execution shall be agreed between the parties.

The same treatment will be given to the contracts or agreements signed with the Pan American Health Organization, for the PAI Immunization Care Program; to the contracts and agreements necessary for the operation of the ILO; to the contracts or agreements that are executed in development of the Integrated Illicit Crop Monitoring System; to the contracts or agreements for the operation of the World Food Program of the United Nations; to contracts or agreements for the development of support programs and educational programs for the displaced and vulnerable population advanced by UNESCO and the IOM, to others indicated in the regulations that are framed in the development of precise objectives of cooperation and technical assistance, within the framework of technical cooperation treaties ratified by the country.

Paragraph 2. The state entities will have the obligation to report the information related to the execution of the contracts referred to in this article.

Paragraph 3. In all cooperation projects that involve state resources, the contributions in kind of the cooperating entity, organization or person, as well as those of the Colombian national entity, must be quantified in national currency. The comptroller offices will exercise fiscal control over the projects and contracts entered into with multilateral organizations, through the state entities that have celebrated them."

Rules
budget

DECREE 11 OF 1996

(January 15)

BY WHICH LAW 38 OF 1989, LAW 179 OF 1994 AND LAW 225 OF 1995 THAT MAKE UP THE ORGANIC STATUS OF THE BUDGET

I. Of the budget system

Article 1. This law constitutes the statute Organic of General Budget of the Nation referred to in article 352 of the Political Constitution. Consequently, all provisions on budget matters must adhere to the prescriptions contained in this Statute that regulates the budget system (Law 38 of 1989, art. 1°; Law 179 of 1994, art. 55, subsection 1°).

Article 3. Coverage of the Statute. It consists of two (2) levels: A first level that corresponds to the General Budget of the Nation, made up of the budgets of the Public Establishments of the National Order and the National Budget.

The National Budget comprises the Legislative and Judicial Branches, the Public Ministry, the Comptroller General of the Republic, the Electoral Organization, and the Executive Branch at the national level, with the exception of public establishments, State Industrial and Commercial Companies and Mixed Economy Companies.

A second level, which includes the setting of financial goals for the entire public sector and the distribution of the financial surpluses of the State Industrial and Commercial Companies, and of the Mixed Economy Companies with the regime of those, without prejudice to the autonomy that the Constitution and the law grants them.

To the Industrial and Commercial Companies of the State and the Mixed Economy Companies with the regime of those, the norms that expressly mention them will be applied (Law 38 of 1989, art. 2°, Law 179 of 1994, art. 1°).

Article 11. The General Budget of the Nation is made up of the following parts:

a) The Income Budget will contain the estimate of the current income of the Nation; of the parafiscal contributions when they are administered by a body that is part of the Budget, of the special funds, of the capital resources and of the income of the public establishments of the national order;

b) The Expenditure Budget or Appropriations Law. It will include the appropriations for the Judicial Branch, the Legislative Branch, the Office of the Attorney General of the Nation, the Office of the Attorney General of the Nation, the Office of the Ombudsman, the Office of the Comptroller General of the Republic, the National Registry of Civil Status, which includes the National Electoral Council, the Ministries, the Administrative Departments, the Public Establishments and the National Police, distinguishing between operating expenses, public debt service and investment expenses, classified and detailed in the manner indicated by the regulations;

(Law 38 of 1989, art. 7; Law 179 of 1994, art. 3, 16 and 71; Law 225 of 1995, art. 1).

II. Of the principles of the budget system

Article 12. The principles of the budget system are: planning, annuity, universality, cash unit, comprehensive programming, specialization, indefeasibility, macroeconomic coherence and homeostasis (Law 38 of 1989, art. 8º; Law 179 of 1994, article 4º).

Article 13. Planning. The General Budget of the Nation must be consistent with the contents of the National Development Plan, the National Investment Plan, the Financial Plan and the Annual Operational Investment Plan (Law 38 of 1989, art. 9; Law 179 of 1994, ar t. 5º).

Article 14. Annuity. The year fiscal begins the 1st of January Y ends the 31December of each year. After December 31, commitments may not be assumed against the appropriations of the fiscal year that closes on that date and the appropriation balances not affected by commitments will expire without exception (Law 38 of 1989, art. 10).

Article 15. Universality. The budget will contain all the public expenditures that are expected to be made during the respective fiscal period. Consequently, no authority may make public expenditures, disbursements charged to the Treasury or transfer any credit, which do not appear in the budget (Law 38 of 1989, art. 11; Law 179 of 1994, art. 55, paragraph 3; Law 225 of 1995, article 22).

Article 16. Cash Unit. With the collection of all income and capital resources, the timely payment of the appropriations authorized in the General Budget of the Nation will be met.

Article 18. Specialization. The appropriations must refer in each administration body to its object and functions and will be executed strictly in accordance with the purpose for which they were programmed (Law 38 of 1989, art. 14; Law 179 of 1994, art.55, paragraph 3).

Article 19. Un-distraint. The income incorporated in the General Budget of the Nation, as well as the assets and rights of the organs that make it up, are unattachable.

Notwithstanding the foregoing Un-distraint, the competent officials must adopt the measures conducive to the payment of the sentences against the

respective bodies, within the terms established for it, and will respect in their integrity the rights recognized to third parties in these sentences.

(Law 38 of 1989, art. 16; Law 179 of 1994, art. 6, 55, subsection 3).

Article 20. Macroeconomic consistency. The budget must be compatible with the macroeconomic goals set by the Government in coordination with the Board of Directors of the Bank of the Republic (Law 179 of 1994, art. 7).

Article 21. Budget homeostasis. The real growth of the Budget Revenue, including all additional credits of any nature, must be consistent with the growth of the economy, in such a way that it does not generate macroeconomic imbalance (Law 179 of 1994, art. 8).

IV. Of the Income Budget and Capital Resources

Article 31. Capital resources will include: Balance sheet resources, internal and external credit resources with maturity greater than one year according to the quotas authorized by the Congress of the Republic, the financial yields, the exchange differential originated by the monetization of the disbursements of the external credit and of the investments in foreign currency, the donations, the financial surplus of the public establishments of the national order, and of the Industrial and Commercial Companies of the State of the National Order and of the Mixed Economy Companies with the regime of those, without prejudice to the autonomy that the Constitution and the Law grants them, and the profits of the Bank of the Republic, discounting the exchange and monetary stabilization reserves.

Paragraph. Income and occasional income must be included as such within the corresponding groups and subgroups dealt with in this article (Law 38 of 1989, art. 21; Law 179 of 1994, art. 13 and 67).

Article 33. Non-reimbursable international assistance or cooperation resources are part of the income budget of the General Budget of the Nation and will be incorporated into it as capital donations by means of a government decree, prior certification of their collection issued by the recipient organ. Its execution will be carried out in accordance with what is stipulated in the international conventions or agreements that originate them and will be subject to the surveillance of the Comptroller General of the Republic.

The Ministry of Finance and Public Credit will report these operations to the Economic Commissions of Congress (Law 179 of 1994, art. ts. 55, paragraph 3, and 61; Law225 of 1995, art. 13).

Article 34. Income of Public Establishments. In the Budget of Income and Capital Resources, the income and resources of Public Establishments will be identified and classified separately. For these purposes, it is understood as:

a) Own income. All current income of Public Establishments, excluding contributions and transfers from the Nation;

b) capital resources. All external and internal credit resources with a maturity greater than one year, balance sheet resources, the exchange rate differential, returns on financial operations and donations (Law 38 of 1989, art. 22, Law 179 of 1994, art. 14).

V. Of the Budget of Expenses or Law of Appropriations

Article 36. The Budget of Expenses will be made up of operating expenses, public debt service and investment spending.

(Law 38 of1989, art. 23; Law 179 of 1994, art. 16).

Article 37. The Ministry of Finance and Public Credit, General Directorate of National Budget in the bill will include investment projects related in the Annual Operational Plan following the priorities established by the National Planning Department, in concert with the Planning offices of the bodies until the concurrence of the resources available annually for them (Law 38 of 1989, art. 33, Law 179 of 1994, article 55,
subsections 3 and 18).

VI. On the preparation of the draft general budget of the Nation

Article 47. The Government is responsible for annually preparing the General Budget Draft of the Nation based on the preliminary drafts submitted by the bodies that make up this Budget. The Government will consider the availability of resources and the budgetary principles for the determination of the expenses that are intended to be included in the Budget project (Law 38 of 1989, art. 27; Law 179 of 1994, art. 20).

Article 48. The Ministry of Finance and Public Credit in coordination with the National Planning Department will prepare the Financial Plan. This Plan must be adjusted based on its annual executions and be submitted to the consideration of the National Council for Economic and Social Policy, CONPES, prior concept of the Superior Council for Fiscal Policy (Law 38 of 1989, art. 29).

Article 49. Based on the investment goal for the public sector established in the Financial Plan, the National Planning Department, in coordination with the Ministry of Finance and Public Credit, will prepare the Annual Investment Operational Plan. This Plan, once approved by CONPES, will be sent to the General Directorate of the National Budget for its inclusion in the General Budget Draft of the Nation. Adjustments to the Project will be made jointly by the Ministry of Finance and Public Credit and the National Planning Department (Law 38 of 1989, art. 30; Law 179 of 1994, art. 22).

XI. Of the execution of the budget

Article 68. No program or project that is part of the General Budget of the Nation may be executed until they are evaluated by the competent body and registered in the National Bank of Programs and Projects.

(Law 38 of 1989, art. 31; Law 179 of 1994, art. 23; Law 225 of 1995, art. 33).

Article 71. All administrative acts that affect budget appropriations must have prior availability certificates that guarantee the existence of sufficient appropriation to meet these expenses.

Likewise, these commitments must have a budget record so that the resources financed with it are not diverted to any other purpose. This record must clearly indicate the value and term of the services to which there is a place. This operation is a requirement for completion of these administrative acts.

Consequently, no authority may contract obligations on non-existent appropriations, or in excess of the available balance, or without the prior authorization of CONFIS or by whomever it delegates, to commit future validity and the acquisition of commitments charged to authorized credit resources.

(Law 38 of 1989, art. 86; Law 179 of 1994, art. 49).

a) From the Annual Monthly Cash Program, PAC

Article 73. The execution of the expenses of the General Budget of the Nation will be made through the Annual Monthly Cash Program, PAC. This is the instrument through which the maximum monthly amount of funds available in the National Single Account is defined, for the entities financed with resources of the Nation, and the maximum monthly amount of payments of the public establishments of the order in terms of its own income, in order to meet its commitments. Consequently, payments will be made considering the PAC and will be subject to the amounts approved in it.

The Annual Cash Program will be classified in the manner established by the Government and will be prepared by the different bodies that make up the General Budget of the Nation, with the advice of the Directorate General of the National Treasury of the Ministry of Finance and Public Credit and considering the financial goals established by CONFIS. To start its execution, this program must have been filed with the Directorate of the National Treasury of the Ministry of Finance and Public Credit.

The PAC corresponding to the appropriations of each fiscal period will have as maximum limit the value of the budget for that period.

(Law 38 of 1989, art. 55; Law 179 of 1994, art. 32; Law 225 of 1995, art. 14 and 33).

b) Of the collection of rents and the transfer of expenses

Article 75. It corresponds to the Ministry of Finance and Public Credit to collect the income and capital resources of the General Budget, through the offices of management of its dependencies or of the entities of public or private law delegated for the effect; The income referred to in article 22 of this Statute is excepted (Corresponds to article 34 of this Statute) (Law 38 of 1989, art. 61).

c) Budget Modifications

Article 79. When, during the execution of the General Budget of the Nation, it becomes essential to increase the amount of the appropriations, to complement the insufficient ones, expand existing services or establish new services authorized by law, additional appropriations may be opened by Congress or by the Government, in accordance with the provisions of the following articles (Law 38 of1989, art. 65).

Article 80. The National Government will submit bills to the National Congress on transfers and additional credits to the budget, when it is essential to increase the amount of appropriations initially authorized or not included in the budget for Operating Expenses, Public Debt Service and Investment (Law 38 of 1989, art. 66; Law 179 of 1994, art. 55, subsections 13 and 17).

Article 81. Neither Congress nor the Government may open additional credits to the budget, without the respective law or decree establishing clearly and precisely the resource that must serve as the basis for its opening and with which the Income and Capital Resources Budget is increased, unless they are credits opened through counter-credits to the appropriations law (Law 38 of1989, art. 67).

Article 82. The availability of the Nation's income to open additional credits to the budget will be certified by the Accountant General. In the case of income from public establishments, availability will be certified by the Budget Chief or whoever takes his place.

(Law 38 of 1989, art. 68; Law 179 of 1994, art. 35).

XV. Of the territorial entities

Article 104. No later than December 31, 1996, the territorial entities will adjust the rules on programming, preparation, approval and execution of their budgets to the rules provided for in the organic law of the budget (Ley225 of 1995, art. 32).

Article 109. When issuing the organic budget regulations, the territorial entities must follow the provisions of the Organic Budget Law, adapting them to the organization, constitutional regulations and conditions of each territorial entity. While these regulations are being issued, the Organic Law of the Budget in what is pertinent.

(Law 38 of 1989, art. 94; Law 179 of 1994, art. 52).

XVI. Of the contracting capacity, of the organization of the expense and of the budgetary autonomy

Article 110. The bodies that are a section in the General Budget of the Nation will have the capacity to contract and commit on behalf of the legal person of which they are a part and order the expenditure in development of the appropriations incorporated in the respective section, which constitutes budgetary autonomy referred to in the Political Constitution and the law. These faculties will be in the head of the head of each body, who may delegate them to officials of the executive level or whoever takes their place and will be exercised taking into account the rules enshrined in the General Statute of Contracting of the Public Administration and in the legal provisions in force.

In the section corresponding to the Legislative Branch, these capacities will be exercised in the manner indicated above and independently by the Senate and the House of Representatives; Likewise, in the section corresponding to the Judicial Branch, they will be exercised by the Administrative Chamber of the Superior Council of the Judiciary.

Under the same terms and conditions, the Superintendencies, Special Administrative Units, Territorial Entities, Assemblies and Councils, Comptrollers and Territorial Personnel Offices and all other state bodies of any level that have legal status will have these capacities.

In any case, the President of the Republic may enter into contracts on behalf of the Nation (Law 38 of 1989, art. 91; Law 179 of 1994, art. 51).

LAW 1169 OF 2007

(December 5)

BY WHICH THE BUDGET OF INCOME AND CAPITAL RESOURCES AND APPROPRIATIONS LAW FOR THE FISCAL EFFECTIVENESS OF JANUARY 1 TO DECEMBER 31, 2008

ARTICLE 19th. Distributions may be made in the income and expense budget, without changing their destination or amount, through a resolution signed by the head of the respective body.

In the case of public establishments of the national order, these distributions will be made by resolution or agreement of the boards or boards of directors. If the resolution or agreement of the boards don't exist, they will be done by their legal representative.

The budgetary operations contained in the afore mentioned administrative acts will be submitted for approval by the Ministry of Finance and Public Credit-General Directorate of the National Public Budget, and in the case of investment expenses, they will require the prior favorable concept of the National Planning Department - Directorate of Investments and Public Finances.

The heads of the organs will be responsible for the legality of the acts in question.

In order to avoid duplication in cases in which the distribution affects the budget of another body that is part of the General Budget of the Nation, the same administrative act will serve as the basis for making the corresponding adjustments in the body that distributes and incorporate those of the receiving body. The budgetary execution of these must begin in the same validity of the distribution; if required, subordinates and subprojects will be opened.

The head of the body or whomever it has delegated the organization of expenditure may carry out, at the liquidation decree level, internal allocations of appropriations in its dependencies, sectional or regional in order to facilitate its operational management and management, without implying a change in its destination. These assignments for their validity will not require approval of the Ministry of Finance and Public Credit - General Directorate of the National Public Budget.

ARTICLE 26th. When the bodies that are part of the General Budget of the Nation enter into contracts among themselves that affect their budgets, with the exception of credit, they will make the adjustments through resolutions of the head of the respective body. In the case of public establishments of the national order, the superintendencies and special administrative units with legal status, as well as those indicated in article 5 of the Organic Statute of the Budget, said adjustments must be made by agreement or resolution of the boards or boards of directors or the legal representative of the body, if there are no boards or boards of directors.

The administrative acts referred to in the preceding paragraph must be sent to the Ministry of Finance and Public Credit-General Directorate of the National Public Budget, accompanied by the respective certificate of budget availability and its economic justification, for the approval of budget operations.

contained therein, a requirement without which they cannot be executed. In the case of investment expenses, they will require the prior favorable opinion of the National Planning Department - Directorate of Investments and Public Finances.

The heads of the organs will be responsible for the legality of the acts in question.

BILL

PROJECT OF LAW BY WHICH RULES ON BUDGET EXECUTION OF NON-REFUNDABLE INTERNATIONAL COOPERATION RESOURCES RECEIVED BY THE COUNTRY, DESTINED TO PUBLIC ENTITIES ARE ESTABLISHED

I. General presentation

This document contains a normative proposal, whose purpose is fundamentally, to respond to the dynamics of international cooperation, to what is established in international cooperation conventions or agreements, the regulations of the cooperators and the modalities of execution of the programs or projects agreed between the government or public entities and the international cooperators.

For the elaboration of this normative proposal, we started from the study of the budget regulations, beginning with the constitutional aspects, the Organic Statute of the Budget, other laws of a budgetary nature that have been issued subsequently and their regulatory decrees.

The modifications that are proposed to the Organic Statute of the Budget, contemplate new initiatives and also consider in a general way those proposed by the Ministry of Foreign Affairs and the Colombian Agency for International Cooperation, today SOCIAL ACTION, to the Ministry of Finance and Public Credit and the Secretariat Office of the Presidency of the Republic in August 2004, on the occasion of the bill that was being processed before the Congress of the Republic, some of which were included in the bill submitted to the consideration of the House of Representatives.

This document contains the justifications of an international order, national convenience and of a constitutional and legal nature, for the legislative proposals.

II. Scope of Social Action

In the first place, it is important to highlight those relevant aspects of SOCIAL ACTION's competence, which justify its interest in the elaboration, justification and presentation of this legislative initiative.

The Presidential Agency for Social Action and International Cooperation, Social Action, regulated by Decree 2467 of 2005, has among its objectives the coordination and promotion of national and international technical and non-reimbursable financial aid received by the country.

Social Action has among its functions:

- Coordinate the development of the policy that in terms of cooperation sets the Ministry of Foreign Affairs.
- Manage and promote non-reimbursable international technical and financial cooperation under the direction and coordination of the Ministry of Foreign Affairs.
- Coordinate and articulate with the potential contributors and recipients of international public and private cooperation, the non-reimbursable technical and financial cooperation that the country receives and grants, as well as the resources obtained as a result of the cancellation of debt with a social or environmental nature.

In turn, within the functions assigned in Decree 2467 of 2004 to the Directorate of International Cooperation, the following should be highlighted:

Coordinate guidance and advice to the competent public entities, sources and executors, on the implementation of the most effective technical, financial and legal mechanisms and modalities for the formulation, negotiation, execution and monitoring of international cooperation resources, in order to improve its management in a coordinated and consistent manner with national policies.

III. Statement of reasons

1. Challenges between donors and recipients. An international commitment “Monterrey Consensus”.

At the International Conference on Financing for Development, the results of which are contemplated in the "Monterrey Consensus", the Heads of State and Government meeting in Monterrey (Mexico) on March 21 and 22, 2002, resolved to confront the problems of financing for development in the world, particularly in developing countries, warning that in order to solve them, a global response must be found.

At this conference, developed countries recognized the importance to support middle-income countries, through international cooperation, in their efforts to eradicate poverty, increase social cohesion, as well as promote sustainable economic development and institutional development.

Some of the declarations and conclusions of the International Conference, in relationship with Official Development Assistance – ODA, were:

1. Achieving the internationally agreed development goals, including those set out in the Millennium Declaration, requires a new partnership between developed and developing countries.
2. Official development assistance (ODA) plays an essential role in complementing other sources of financing for development.
3. It is also a critically important support instrument for education, health, development of public infrastructure, agriculture, rural development and increased food security.

4. They recognized the need to substantially increase ODA and other resources so that developing countries can meet the goals and development goals agreed internationally, including those set forth in the Millennium Declaration.

To achieve the above, they invited developing countries to consolidate the progress made to effectively use ODA in order to achieve their development goals and objectives and determined as a great challenge, to create the necessary internal and international conditions to facilitate direct investment flows that contribute to the achievement of priority development objectives from developed countries to developing countries. In this sense, they agreed that:

1. An enabling domestic environment is essential for mobilizing resources, increasing productivity, and attracting and productively using international investment and assistance. The international community must support the efforts to create such an environment.

2. Rational policies and good governance are needed in all levels to ensure the effectiveness of ODA.

3. To mobilize public resources and manage their use, it is essential that governments have a system that is characterized by its effectiveness, efficiency, transparency and sense of responsibility.

4. Recipient countries must intensify their efforts in such a way that can contribute more to the development of technical assistance programs, including procurement, and have more influence in that process, and make more and better use of local technical assistance resources.

5. Good governance at all levels is also essential to sustained economic growth, eradication of poverty and sustainable development throughout the world. In order to better reflect the increased interdependence and enhance legitimacy, economic governance needs to be developed in two areas: the basis for decision-making on development issues needs to be broadened, and organizational weaknesses need to be remedied.

In this sense, the Heads of State committed to:

1. Adopt rational policies, promote good governance in all levels and respect the rule of law.

2. To increase support for ODA, work together to further improve development policies and strategies, both nationally and internationally, in order to increase the effectiveness of that aid.

3. Establish appropriate legal and regulatory frameworks in the respective countries, which, while allowing transparent and stable conditions, make it easier for entities to function efficiently and profitably and have the greatest impact on development.

Summit of Latin America, the Caribbean and the European Union

The above commitments were ratified at the III Summit of Latin America, the Caribbean and the European Union, held in Guadalajara, Mexico, on the 28th and 29th of

May 2004, where the Heads of State and Government from Latin America, the Caribbean and the European Union, met and highlighted the importance of implementing the commitments assumed at the Monterrey Conference on Financing for Development in all its aspects.

Paris Declaration on the effectiveness of development aid

Ministers from developed and developing countries leading multilateral and bilateral development institutions, meeting in Paris on March 2, 2005, expressed their decision to undertake far-reaching and monitorable action to reform the way aid is provided and managed, looking ahead to the UN's five-year review of the Millennium Declaration and the Millennium Development Goals (MDGs).

They recognized that if it is necessary to increase the volume of aid and other development resources to achieve these objectives, it is also necessary to significantly increase the effectiveness of development aid at the same time, as well as to support the efforts made by the recipient countries by strengthening their governments and improving development performance.

They reaffirmed the commitments made in Rome - High Level Forum on Harmonization (February 2003) - to harmonize and align the provision of development aid. They were encouraged that many donors and recipient countries are making aid effectiveness a top priority.

Manifested that using one's own institutions and national systems, where there is a good guarantee that aid will be used for approved purposes, increases aid effectiveness by strengthening the recipient country's sustainable capacity to develop, implement and be accountable for its policies before its citizens and its parliament. National systems and procedures generally but not only include national provisions and procedures for public financial management, accounting, auditing, procurement, results frameworks and monitoring.

Recipient and donor countries have a shared interest in being able to monitor progress in improving national systems over time.

Recipient countries committed to:

1. Run diagnostic analyzes that provide reliable assessments of the countries systems and procedures.
2. On the basis of each of the diagnostic analyses, undertake the necessary reforms to ensure that national systems, institutions and procedures for managing aid and other development resources are effective, accountable and transparent.
3. Undertake reforms such as governance reform, which may be necessary to launch and nurture development of sustainable processes capacity.

The donors committed to:

1. Provide reliable indicative aid commitments within a multi-year framework and disburse aid in a predictable and timely manner according to adopted schedules.

2 Rely as widely as possible on transparent mechanisms of accounting and budget of the receiving Government.

2. Vision Colombia 2019. Colombia, an efficient State at the service of citizens

An efficient State in 2019 must assimilate the transformations of the international scene, in which the interdependence between countries has been accentuated and new blocs and social and political actors have appeared. Colombia must be integrated into the international context, strategically taking advantage of its potential with the capacity to generate political differentiation of the country from the positive and to interact in a world of multiple and overlapping blocs.

The 1991 Constitution defined Colombia as a Social State of Law and for this reason the vision and goals set out in the Colombia Vision 2019 document refer to the means to achieve the ends established in the Charter.

By 2019, Colombia must be an efficient and transparent State.

Correcting the failures of the State and achieving efficiency implies the redesign of the bureaucratic model of public management, which will have an important impact on improving procedures and the simplification and flexibility of procedures.

3. Needs and benefits of this reform

The need for more resources to meet development needs and Colombia's situation as a middle-income country make it imperative that the increasingly scarce international cooperation resources must be executed efficiently and effectively.

The inefficiency of the procedures and paperwork that state entities must advance in the execution of the resources assigned by the cooperators for the development of the agreed programs or projects, encourages the donors themselves to see the need to establish in the donation agreements that the resources are not delivered to the public entities that benefit from them, but to international organizations or non-governmental international or national organizations for its execution, operations that considerably reduce cooperation, in the same proportion of the costs that this administration operation entails.

The foregoing, on the other hand, has prevented the Colombian State and its public entities from encouraging the creation of the necessary administrative capacity and structure and having a level of knowledge and expertise, on standards, regulations and procedures of the cooperators, essential to execute the cooperation resources.

Desirable and consistent with the principle of responsibility of public servants in the development of their projects, it would be the execution of international cooperation resources by the same public entities that are beneficiaries of the donation agreements, assuming the execution of the administrative activities that are in progress the possibility and obligation to perform, without having to transfer these functions and responsibilities to third parties, substantially affecting the level of effectiveness and impact of international cooperation.

International cooperation resources affect the proper fulfillment of constitutional or legal functions to assigned public entities; they complement in an important way those of national source, for the fulfillment of such functions.

On the other hand, there is a growing tendency for international cooperation resources allocated by States, international organizations and aid, assistance or cooperation entities to the execution of projects, be delivered directly to the public entities executing the programs or projects that have been approved, which implies a higher level of institutional commitment for the country.

In response to the foregoing, the country must have regulations within its interior that allow an efficient and effective execution of the resources that the international cooperators receives.

The foregoing also has its justification in carrying out the principles of speed, effectiveness, efficiency, economy that govern the actions of the administrative authorities and in the development of the government guideline on the suppression of unnecessary procedures in the actions of public entities. For this reason, alternatives to the existing procedures are proposed, in such a way that the scarce resources that developed countries allocate from official development aid are executed in the best way.

IV. Regulatory proposal

This document contains a normative proposal, whose purpose is fundamentally, to respond to the dynamics of international cooperation, to what is established in international cooperation conventions or agreements, the regulations of the cooperators and the modalities of execution of the programs or projects agreed between the government or public entities and the international cooperators.

It observes and starts from the constitutional and legal principle of the need to incorporate resources from international cooperation into the General Budget of the Nation, since they are resources approved by international donors, which enter the public patrimony and are received by the entities to execute programs or projects of interest to the country.

It consists of a project of law by means of which the Organic Statute of the Budget is reformed, which at the same time respects said constitutional and legal principle, observes the principles of the Budget System contemplated in the Organic Statute of the Budget, as postulates that inform and order the rest of the budgetary order, establishing specific regulations and in accordance with the nature, origin and destination of the resources that public entities receive from States, international organizations and other international cooperators.

For the preparation of this regulatory proposal, the following parameters and objectives have been taken into account and considered fundamental:

1. Allow transparency and control. The previous regulatory proposals do not prevent exercise of the controls over public resources that are the responsibility of the control bodies. As corresponds to the nature of the resources that enter the General Budget of the Nation, on the resources of international cooperation, at all times, the controls that the fiscal and disciplinary control bodies such as the Comptroller General of the Republic and the Attorney General's Office and in any case, subject to the regulations that the General Accounting of the Nation contemplates on their accounting.

2. Seek timely, efficient and effective compliance with international commitments, agreed in agreements or donation agreements on programs or projects.

3. Allow the efficient execution of international cooperation, without further procedures or requirements than the minimum and expressly required in the Organic Statute of the Budget.

4. Facilitate the execution of international cooperation.

5. Promote the execution of the resources that international cooperators allocate for the development of the country, through public entities.

6. Its congruence, with what is established in the Political Constitution of Colombia and the principles of the budget system enshrined in the Organic Statute of the Budget.

7. Avoid the interruption or suspension of international cooperation programs or projects agreed with other States, international organizations or assistance, aid or international cooperation entities.

8. Avoid the non-execution, return or reimbursement and therefore, loss of resources of international cooperation agreed upon and arranged by the sources to provision of approved programs or projects to public entities.

V. Legal foundations

For the elaboration of this normative proposal, a meticulous study of the budgetary regulations was started, beginning with the constitutional aspects, the Organic Statute of the Budget, other laws of a budgetary nature that have been issued subsequently and their regulatory decrees, as well as the texts of bills that have been presented by the national government and studied by the Congress of the Republic in recent years.

THE ORGANIC STATUTE OF THE BUDGET AND THE RESOURCES COMING FROM INTERNATIONAL COOPERATION

With regard to resources from international cooperation, given its nature as a non-reimbursable foreign source and its purpose of development aid, the Organic Statute of the Budget contains a special and exceptional rule, which at the same time regulates one of the forms of its incorporation into the General Budget of the Nation, contemplates, for all budgetary purposes, the regulations applicable for the execution of resources of this nature:

Indeed, the first paragraph of article 33 of the Organic Statute of the Budget has:

1. “The non-reimbursable international assistance or cooperation resources are part of the income budget of the General Budget of the Nation and will be incorporated into it as capital donations by decree of the Government, prior certification of its collection issued by the receiving body.

2 Its execution will be carried out in accordance with the provisions of the international conventions or agreements that originate them, and they will be subject to the surveillance of the Comptroller General of the Republic”. (The underlined and bold is ours).

So far, occasional application has been given to what was established in the first part of the normative precept (incorporation by decree).

The most relevant and that concerns us, this is the one related to the form of its execution, contemplated in the second, has not been effective; Said rule has not produced any legal effect, because despite its validity and clarity, the same rules and procedures established for the other resources that make up the general budget of the nation have been applied for the resources from international cooperation in their execution.

The presence in the Organic Statute of the Budget of a norm that establishes a special execution regime for resources of this nature makes a legislative reform imperative, which gives it its own content and development, so that the purposes that guided and inspired the legislator with its expedition, the Keynesian postulate of the "factual power of the normative" is effective and a reality.

This normative proposal is about developing the special treatment that article 33 of said Statute has been contemplating since 1994 and 1995 in Laws 179 and 225, for the execution of resources from international cooperation.

VI. Bill establishing rules on budget execution of resources of non-reimbursable International Cooperation that the country receives, intended for public entities

1. Incorporation of resources to the General Budget of the Nation

Despite the fact that SOCIAL ACTION has a budget space through which donations from Governments or International Organizations can be entered into the General Budget of the Nation, as well as assign appropriation quotas to public entities that execute international donations, the procedures for both Carrying out transfers such as the afore mentioned assignments, constitute additional procedures that delay the start of international cooperation projects. (Only in those events in which SOCIAL ACTION directly executes the resources of cooperation, there is an immediate possibility of its execution).

Currently, in addition to the above procedures, international cooperation resources are incorporated by decree, as long as they are in the treasury of the respective entity, which is not a common occurrence, since cooperators make disbursements generally under the modality of advances or revolving funds and to the extent of the resource flow needs of the projects, which would imply having to issue a decree for each one of the disbursements and paralyze the execution of the projects until they are counted in the treasury.

To the above, it is added that this modality of incorporation of resources to the General Budget of the Nation implies the issuance of a decree of addition of the same and another of liquidation, having to carry out a double administrative activity.

Solution: In this sense, without prejudice to SOCIAL ACTION preserving this budget space, it would be necessary to modify article 33 of Decree 111 of

1996, Organic Statute of the Budget, in such a way that public entities can also obtain budget appropriation to execute resources of donation by decree issued by the National Government, based on the respective donation agreement, a decree in which the liquidation process is simultaneously obtained.

However. This in any case will imply the Entities to carry out the respective registration of the project in the Project Bank of the DNP, and the intervention of the Ministry of Finance and Public Credit for the respective budget adjustments, management that it can normally take between one and two months according to the experience of SOCIAL ACTION. However, we do not find how these procedures that are necessary for budget control purposes could be avoided. In all, it would be very convenient to clearly define times with the DNP and the Ministry of Finance to expedite their actions in this type of procedure, seeking a reduction in the time that this process lasts.

Proposal[122]

ARTICLE. Incorporation to the General Budget of the Nation of resources from donations, cooperation, assistance or international aid. Resources from donations, assistance or non-reimbursable international cooperation are part of the income budget of the General Budget of the Nation. For its execution, they will be incorporated into it as capital donations by means of a Government Decree, prior certification of its collection issued by the receiving body or based on the agreement or cooperation agreement that has been entered into. Their execution will be carried out in accordance with the provisions of the conventions, agreements or decisions that originate them and will be subject to the surveillance of the Comptroller General of the Republic. The will of the donor must be respected in such a way that the object of the donation is not modified, unless said object disappears. The Ministry of Finance and Public Credit will report these operations to the Economic Commissions of Congress.

Paragraph. For purposes of incorporating resources into the General Budget of the Nation and its liquidation, the Government will issue a decree in which the respective addition and liquidation takes place.

2. Execution of resources through international cooperation agreements

Execution of budget resources of the Nation through international cooperation agreements, when delivered in development or as a contribution of international cooperation agreements, it has been applied with good judgment, but its origin is of an administrative nature.

It has had its source mainly, in concepts of the Legal Office of the Ministry of Foreign Affairs, which have been collected and accepted repeatedly by the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit, as well as by the Comptroller General of the Republic[123].

Solution: The above pronouncements should be given legal status, in order to give them permanence and go from being an entity criterion to being kept in the legal system. The foregoing will give certainty and legal certainty both to the expense managers and to the operators of the budgetary, fiscal and disciplinary.

Proposal

Article. Execution through international cooperation agreements. For budget purposes,

122 This text, in essence, corresponds to article 90 of the paper for the second debate on Bill No. 194 of 2003, Chamber.

international cooperation shall be understood as the corresponding to agreements or agreements where international contributions are given, in kind and/or in cash, that complement the resources of public bodies for the implementation of said agreements. These resources may be subject in their execution to the rules and regulations of said agencies.

The resources delivered as a contribution or national counterpart by the entities in compliance with the commitments acquired in the Cooperation Agreements, develop the object of the appropriation and constitute commitments or budgetary obligations that affect the respective appropriation. At the end of said agreements, the balances of these resources must be repaid to the General Directorate of the Treasury, with the respective interest and exchange differential, if applicable.

3. Permanence of cooperation resources in treasuries of public entities, beyond the budget validity

Public entities that implement international cooperation resources, which do not have their own resources in their budgets -v. gr., the ministries - when the budgetary reserves expire, they must deliver them to the National Treasury Directorate.

Without distinguishing the legal nature or budget of the organs that make up the PGN, these resources must always remain available for the execution of the programs or projects for which they were delivered by the cooperators and should not be delivered to the treasury, since they are affected by compliance of the donor's will.

It is a general requirement of the cooperators, that their resources cannot be diverted to any other purpose and be kept in independent accounts, that allow control of their movements.

Solution: Norm in the Organic Statute of the Budget in the sense that international cooperation resources are allowed to remain in the treasuries of the executors.

Proposal

Article. The bodies that make up the General Budget of the Nation, executors of non-reimbursable international cooperation resources, may keep in their treasuries the money they have received from donors, during the period of execution of the respective projects, remaining in any case available for compliance. of the donor's will.

4. Validity of cooperation projects vs. Colombian budget validity

In the case of cooperation agreements, it is normal to require more than one validity for the execution of projects financed with international resources.

Although there is the figure of future validity, its processing has not always been viable or has not had the due speed, which makes it difficult to execute the contracts derived from the Donation Agreements, in some cases having to proceed with the liquidation of public entities in order to subsequently re-subscribe a contract.

123 Concept: OJT 20541 - 29170. June 5, 1996. Legal Office of the Ministry of Foreign Affairs.

V. gr. Concept No. 5633 General Directorate of the National Budget, May 22, 2001.

Circular 80110-0002 of June 12, 2002addressed to the Delegate Comptrollers, Directors, Managers and Departmental Managers.

Concept of May 9, 2002, Legal Office of the Comptroller General of the Republic, in relation to a query made by the Administrative and Financial Manager of the CGR.

new contract or agreement for the balance still pending execution.

Proposal

Article. Exception to future validity. Notwithstanding the provisions of articles 13 and 14 of the Organic Statute of the Budget, in order to assume commitments with resources from international cooperation agreements that exceed the annual budget, authorization will not be required to commit a budget for future periods, as long as it is fulfilled that:

a) The maximum amount of future validity, the term and the conditions of the same consult the annual goals of the Medium Term Fiscal Framework that is dealt with in article 1 of Law 819 of 2003;

b) As a minimum, fifteen percent (15%) is appropriated in future periods in the fiscal period in which the commitments are assumed.

Once the international conventions or agreements that originate them have been signed, the executing public entity will send a copy of the respective agreement to the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit and to the National Planning Department together with the projection of income and expenses that will be executed in each of the periods.

The Ministry of Finance and Public Credit, General Directorate of the National Public Budget, will include in the budget projects of the respective validity, the necessary allocations to comply with the provisions of this article.

ARTICLE. Budget Monitoring and Evaluation. For purposes of budget monitoring and evaluation, the bodies that are part of the General Budget of the Nation must send the information requested to the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit and to the National Department of Finance. Planning, according to your competence.

BILL

FULL ARTICULATED TEXT - DRAFT LAW ESTABLISHING RULES ON BUDGET EXECUTION OF INTERNATIONAL COOPERATION RESOURCES RECEIVED BY THE COUNTRY

ARTICLE. Incorporation to the General Budget of the Nation of resources from donations, cooperation, assistance or international aid. Resources from donations, assistance or non-reimbursable international cooperation are part of the income budget of the General Budget of the Nation. For its execution, they will be incorporated into it as capital donations by means of a Government Decree, prior certification of its collection issued by the receiving body or based on the agreement or cooperation agreement that has been entered into.

Its execution will be carried out in accordance with the provisions of the conventions, agreements or decisions that originate them and will be subject to the surveillance of the Comptroller General of the Republic. The will of the donor must be respected in such a way that the object of the donation is not modified, unless said object disappears.

The Ministry of Finance and Public Credit will report these operations to the Economic Commissions of the Congress.

Paragraph. For incorporation purposes of the resources to the General Budget of the Nation and its liquidation, the Government will issue a decree in which the respective addition and liquidation.

ARTICLE. Execution through international cooperation agreements. For budgetary purposes, international cooperation will be understood as that corresponding to conventions or agreements where international contributions are given, in kind and/or in cash, that complement the resources of public bodies for the implementation of said conventions. These resources may be subject in their execution to the rules and regulations of said agencies.

The resources delivered as a contribution or national counterpart by the entities in compliance with the commitments made in the cooperation agreements, they develop the object of the appropriation and constitute commitments or budgetary obligations that affect the respective appropriation. At the end of said agreements, the balances of these resources must be repaid to the General Directorate of the Treasury, with the respective interest and exchange differential, if applicable.

ARTICLE. The bodies that make up the General Budget of the Nation, executors of non-reimbursable international cooperation resources may keep in their treasuries the money they have received from donors, during the period of execution of the respective projects, remaining in any case available to fulfill the will of the donor.

ARTICLE. Exception to future validity. Notwithstanding the provisions of articles 13 and 14 of the Organic Statute of the Budget, in order to assume commitments with resources from international cooperation agreements that exceed the annual budget, authorization will not be required to compromise budget for future periods, provided that:

a) The maximum amount of future validity, the term and the conditions of the same consult the annual goals of the Medium-Term Fiscal Framework that is dealt with in article 1 of Law 819 of 2003;

b) As a minimum, fifteen percent (15%) is appropriated in future periods in the fiscal period in which the commitments are assumed.

Once the international conventions or agreements that originate them have been signed, the executing public entity will send a copy of the respective agreement or agreement to the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit and to the National Planning Department. together with the projection of income and expenses that will be executed in each of the periods.

The Ministry of Finance and Public Credit - General Directorate of the National Public Budget, will include in the budget projects of the respective

validity, the necessary allocations to comply with the provisions of the present article.

ARTICLE. Budget Monitoring and Evaluation. For purposes of budget monitoring and evaluation, the bodies that are part of the General Budget of the Nation must send the information requested to the General Directorate of the National Public Budget of the Ministry of Finance and Public Credit and to the National Department of Finance. Planning, according to its competence.

Rules
of a tax nature

ARTICLE 96 OF LAW 788 OF 2002

Article 96. Exemption for government donations or foreign entities. Funds from aid or donations from foreign entities or governments agreed with the Colombian Government, destined to carry out programs of common utility and protected by intergovernmental agreements, are exempt from any tax, fee or contribution. Purchases or imports of goods and the acquisition of services made with the donated funds will also enjoy this tax benefit, provided that they are used exclusively for the purpose of the donation. The National Government will regulate the application of this exemption.

DECREE 540 OF 2004

(February 24)

BY WHICH ARTICLE 96 OF LAW 788 OF 2002 IS REGULATED

The President of the Republic of Colombia, in exercise of the constitutional and legal powers, especially those granted by article 189 number 11 of the Political Constitution and article 96 of Law 788 of 2002,

DECREES:

Article 1st. *App.* The provisions contained in the Present decreeThey will be applied in relation to the funds or resources in money originating in aid or donations destined to programs of common utility in Colombia, coming from entities or governments of countries with which there are intergovernmental agreements or agreements with the Colombian Government.

In the event that there is a valid international treaty or agreement that consecrates privileges with respect to such aid or donations, the treatment will be that established in therespective treaty or agreement.

Article 2. *Exemption of taxes, rates either contributions.* The exemption a referred to in article 96 of Law 788 of 2002, will be applied with respect to taxes, rates, contributions, of the national order, that could affect the importation and the

expenditure or investment of funds from aid or donations made under intergovernmental agreements or agreements with the Colombian Government, destined to carry out programs of common utility.

Also exempt from the payment of taxes, rates or contributions of the national order, the contracts that must be entered into for the execution of works or projects of common utility, as well as the acquisition of goods and/or services and the financial transactions that are carried out directly with the money from of the aid or donation resources, for the same purpose.

Paragraph. For the purposes of this exemption, it is up to each public entity in the sector, whether at the national or territorial level, to certify whether the projects and investments to which the corresponding aid or donations are destined are of common use. Said certifications must be sent immediately to the executing entity of the resources, which in turn will send them within the first five (5) business days of each quarter to the National Tax and Customs Directorate, DIAN, for your competition.

Article 3. Exemption from Sales Tax (VAT) and Tax on Financial Movements (GMF). The exemption from Sales Tax (VAT) with respect to the resources referred to in article 96 of Law 788 of 2002, will proceed directly on the acquisition operations of goods or services taxed with this tax that the administrator or executor of the resources are made directly or through contracts for the realization of programs of common utility, with the fulfillment of the requirements indicated in article 4 of this decree.

The lien exemption to the Financial Movements (GMF), will operate directly regarding the disposition of the resources of the account opened exclusively for the management of the same. For this purpose, the administrator or executor must mark in the financial entity the account that will be used for the exclusive management of the resources.

Article 4. General exemption requirements. For the origin of the exemption established in article 96 of Law 788 of 2002, the donor may execute the resources managing them directly; through international organizations; duly authorized public entities, or designate non-governmental organizations duly accredited in Colombia as executing entities of the donated funds, owing in each case meet the following general requirements:

1. In the case of the Non-Governmental Organization that is designated to administer and execute the resources, its legal representative must attach a certification issued by the Government or foreign entity granting the cooperation, in the stating its status as executing entity of the donated funds, having to keep separate accounts of the managed resources.

2. The legal representative of the entity that manages or executes the resources must issue a certification regarding each contract or operation carried out with the resources of the aid or donation, stating the name of the agreement, agreement or intergovernmental action that covers the aid or donation, indicating the date thereof and the parties involved. This certification will serve as support for the exemption from the national stamp tax, the sales tax, the Levy on Financial Movements (GMF) and other rates and contributions of the national order that could fall on the use of

resources, certification that must be signed by the Statutory Auditor or Public Accountant, as the case may be. The administrator or executor of the resources must deliver said certification to the suppliers of goods and services, in order for it to be given application to the corresponding VAT exemption.

3. The administrator or executor of the resources must manage the aid or donation funds in an account opened in a financial entity, exclusively destined for that purpose, which will be canceled once the total execution of the funds as well as the project or work beneficiary of the aid or donation.

4. The supplier, for his part, must leave this record in the invoices he issues and keep the certification received as support for his operations, for when the Administration requires it, which also authorizes him to deal with the deductible taxes to which he is entitled in accordance with articles 485 and 490 of the Tax Statute, although without the right to request a refund of the balance in favor that originate in a bimonthly period.

Paragraph. The aspects not contemplated in this decree will be governed by the general rules contained in the Tax Statute and in the corresponding regulations.

Article 5. Validity. This decree is effective from the date of its publication. Publish and

comply.

Given in Bogotá, DC, on February 24, 2004.

DECREE 1012 OF 2004

(April 01)

BY WHICH ARTICLE 204 OF DECREE 2685 OF 1999 IS MODIFIED

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

In use of its constitutional and legal powers, and especially those conferred by numeral 25 of article 189 of the Political Constitution, subject to the general rules provided for in Laws 6 of 1971 and 7 of 1991, prior concept of the Committee on Customs, Tariff and Foreign Trade Affairs, and

CONSIDERING

That in session No. 113 of December 5, 2003, the Customs, Tariff and Foreign Trade Affairs Committee authorized the modification of article 204 of Decree 2685, in order to reduce the procedure for receiving donations intended for the Social Solidarity Network and the National Directorate for Disaster Prevention and Attention.

DECREES:

ARTICLE 1: Modify article 204 of Decree 2685 of 1999, which will read as follows: “Article

204. Urgent Deliveries.

The Directorate of National Taxes and Customs may authorize, without any prior formalities, the direct delivery to the importer of certain goods that so require, either because they enter as assistance for victims of catastrophes or accidents, due to their special nature or because they respond to the satisfaction of an urgent need.

In the last two cases, the customs taxes to which there is place and the Customs will be caused, if it deems it convenient, will require a guarantee to strengthen the completion of the procedures of the respective importation.

In the case of the entry of aid for victims of catastrophes or accidents, the merchandise classifiable by chapters 84 to 90 of the Customs Tariff, must be re-exported or submitted to the corresponding import modality, immediately fulfill the purpose for which they were imported.

They may also be directly delivered to the importer, without any prior procedure, under the terms and conditions established for the goods that enter as aid for victims of catastrophes or accidents:

a) Goods donated in favor of official entities of the national order by foreign entities or governments, by virtue of international or inter-institutional agreements, treaties or cooperation and assistance projects entered into by them.

b) Merchandise imports carried out by accredited diplomatic missions in the country, which will be delivered on loan to official entities of the national order, which may be re-exported or submitted to the modality of corresponding import.

c) Merchandise intended for official entities that are imported in the development of international cooperation or assistance projects or agreements, by international cooperation organizations, or by accredited diplomatic missions in the country.

d) Assets donated in favor of the Social Solidarity Network, for the development of its corporate purpose, by a foreign entity of any order, an international organization or non-governmental organization recognized in the country of origin. Goods thus imported into the national customs territory may not be marketed.

PARAGRAPH. If the official entity receiving the goods referred to in subparagraph c) of this article were to dispose of them to individuals or legal entities of private law, they must submit to the import modality that corresponds and with the payment of the customs taxes that may arise".

ARTICLE 2o. Validity. This decree is in force from the date of its publication and repeals Decree 2636 of 2002.

PUBLISH AND ENFORCE

Given in Bogotá, DC on April 1, 2004

ALVARO URIBE VELEZ
President of the Republic

The Minister of Finance and Public Credit

ALBERTO CARRASQUILLA BARRERA

The Minister of Commerce, Industry and Tourism

JORGE HUMBERTO BOTERO

DECREE2148 OF1991

(September 13)

BY WHICH THE RULES APPLICABLE TO THE IMPORTATION OF MOTOR VEHICLES, LUGGAGE ARE ESTABLISHEDAND MESSAGES CARRIED OUT BY EMBASSIES OR OFFICIAL HEADQUARTERS, DIPLOMATIC, CONSULAR AND ACCREDITED INTERNATIONAL ORGANIZATION AGENTS IN THE COUNTRY AND COLOMBIAN OFFICIALS WHO RETURN AT THE END OF THEIR MISSION.

The President of the Republic of Colombia, in use of the powers established in ordinal 25 of article 189 of the Constitution Politics, in developing of Law 6a. of 1971, in accordance with the provisions of Decree Law 1689 of 1991 and after hearing the concept of the National Customs Policy Council,

DECREES:

General features

ARTICLE 1. DEFINITIONS. For the purposes of this Decree, the following definitions shall apply:

Franchise admission

It is the dispatch for consumption of merchandise with total or partial exemption from import duties, sales tax or others, which can be carried out by the beneficiaries indicated here, provided that they are imported in compliance with the regulations that favor them and even the authorized quotas, depending on whether it is an installation fee or a permanence fee.

franchise application

The franchise is particular when it is granted directly to the holder of the privilege and it is official when it is granted to accredited missions in the country, as beneficiaries.

The particular franchise will apply to officials duly accredited in the country provided they are not of Colombian nationality and do not carry out any other lucrative activity.

franchise classes

OF INSTALLATION, which is granted during the first year counted from the accreditation of the beneficiary in the country and includes luggage, household goods and motor vehicles that they have the right to bring for their use or that of their family.

ANNUAL, which is granted to the beneficiary for each year counted from the date of expiration of the installation fee or the previous annual fee.

Both franchises are personal, non-transferable and in accumulative and may not be used outside of its validity period.

Declaration of admission with excess

It is the document established in a special form by the General Directorate of Customs of the Ministry of Finance and Public Credit, which, with the prior consent of the Ministry of Foreign Affairs, will be used in the processing of the franchise admission regime, applicable to the beneficiaries of this Decree.

Normal declaration for consumption

It is the document used by any importer to dispatch for consumption any merchandise under the normal customs regime that the returning diplomat will use in the process of dispatching its automobile for consumption, in accordance with the benefits that correspond to it.

Decrease or limitation

In any case, these franchises will be granted by the General Directorate of Protocol of the Ministry of Foreign Affairs, who, in application of the principle of reciprocity, may decide to decrease or limit it. This decision will be communicated to the General Directorate of Customs for its immediate application.

Vehicle registration

It is the act by which the vehicles are registered before the General Directorate of the Protocol of the Ministry of Foreign Affairs, and they are granted the respective special plates.

Household

It is the set of furniture, electrical appliances and other devices or accessories for normal use in the home, the garden or other dependencies of the house and those sports articles used by its inhabitants in the development or cultural physical development.

automobile vehicle

For the purposes of this Decree, motor vehicles subject to franchise shall be understood as those mentioned below according to their tariff headings:

87.02 =	Buses, vans and microbuses.
87.03 =	Station Wagon, Estate, Campers and other automobiles, except those of race.
87.04 =	Dump trucks, stake type trucks, "panel" type trucks and the like, with a total weight with maximum load not exceeding five (5) tons; pick up with single cab or double cab.
87.05 =	Laboratory cars, cars - workshop, cars - hospital, cars -radiological and cars - school.
87.11 =	Motorcycles.

The Ministry of Foreign Affairs may agree based on the principle of reciprocity the importation of other similar vehicles.

ARTICLE 2o. ARRIVAL OF GOODS IN THE COUNTRY. All shipments of goods or motor vehicles destined for diplomatic missions,

Consular, International and Technical Assistance Organizations on a permanent basis and officials holding prerogatives, privileges or immunities, may arrive and be dispatched by any Customs in the country. In the documents the name of the mission or the owner must be entered on the boarding pass.

ARTICLE 3o. CLASSIFICATION OF THE BENEFICIARIES. The rules of the present Decree will apply to:

1. Officials accredited in the country:

a) diplomatic or consular staff;

b) Directors and Deputy Directors of regional offices of an international organization;

c) Main representative of organizations and international agencies;

d) Experts and technical officials from international organizations and agencies;

e) Specialized personnel accredited in the country, in the development of technical assistance agreements, prior certification from the Ministry of Foreign Affairs;

f) Administrative officials, duly accredited by the Head of Mission, paid by the country that appoints them, nationals of the State creditor and who do not have residence in the country;

g) Foreign professors who provide their services in the developing country of treaties or agreements in cultural, technical or scientific matters, prior certification of the Ministry of Foreign Affairs.

2 Accredited missions in the country:

a) diplomatic consular;

b) From international organizations;

c) Cooperation and technical assistance.

3. Colombian officials returning to the country:

a) Who have held a diplomatic or consular post;

b) Officials and technicians at the service of the Inter-American Development Bank under the terms provided in the Agreement approved by Law 44 of 1968; and officials at the service of international organizations, of which Colombia is a part, when they have held a position that has a category or professional level P-4,P-5, DI, D-2 or higher, or their equivalents;

c) Specialized personnel assigned to the diplomatic and consular missions of the Republic;

d) Those who, under the terms of article 10 of Law 1 of 1974, have performed the functions of auditors and deputy auditors of the Office of the Comptroller General of the Republic;

e) Administrative staff that does not have a local character, attached to the diplomatic and consular missions.

Granting of the franchise

ARTICLE 4th. FRANCHISES FOR OFFICIALS ACCREDITED IN THE *COUNTRY.* The officials listed in numeral 1o. of the previous article will enjoy of the following exemptions and franchises:

1. Exemption from registration, license or any other authorization requirement for the importation of the motor vehicle or other merchandise that they bring as luggage, household or for consumption.

2. Liberation of import duties, sales taxes and any other tax that affects the dispatch for consumption of the merchandise indicated in the previous numeral and up to the amount of the authorized quotas per facility or year of permanence.

In order to be entitled to the above exemptions, the goods must constitute the personal effects of the beneficiary or his family, merchandise destined for its consumption or to your personal transfer or habitual transport of people or goods.

The heads of mission may import two (2) motor vehicles for personal or family use, complying with the quota requirements and terms indicated in this Decree.

ARTICLE 5th. FRANCHISE FOR BENEFICIARY MISSIONS HEADQUARTERS. The missions related in numeral 2 of article 3, will enjoy the same exemptions and franchises established in the previous article with the following specialties:

1. In consumer items, without being subject to any quota.

2. In durable goods, of restricted use for the mission, with no value limit.

3. One motor vehicle every four years, prior sale of the previous one. If the mission needs one (1) or more additional motor vehicles, it may request authorization, with prior justification, from the General Directorate of Protocol of the Ministry of Foreign Affairs. Foreign Affairs, who will grant it, if appropriate.

Its trailers or semi-trailers of tariff heading 871.6 will form an integral part of the vehicle with franchise, provided that they can be pulled by it.

ARTICLE 6th. FRANCHISE AMOUNT. The amounts of the installments installation and annual fee will be as follows:

a) For Ambassadors, Heads of Diplomatic Mission and Heads of Missions of International Organizations or Assistance or Technical Cooperation:

installation fee	$90,000
Annual quota	$7,000

b) For the rest of the diplomatic staff and consular, of international organizations and assistance and technical cooperation, these amounts will be:

installation fee	$50,000
Annual quota	$3,500

c) For administrative staff, only a one-time installation fee will be applied, and its amount will be US$30,000.

The amounts of the previous quotas, through resolution, may be updated annually by the Ministry of Finance and Public Credit, who will communicate them to the Ministry of Foreign Affairs for their knowledge and to the General Directorate Customs for its application.

The change of the motor vehicle will not affect the amount of the corresponding annual fee.

Vehicles assembled in the country may be subject to this franchise and may be entered for consumption without payment of import duties and sales tax when they submit a Declaration of Admission with Franchise. In these cases, the value of the quota used will be the one that corresponds to the tax base on which the normal taxes are applied in the assemblers.

ARTICLE 7th. DIPLOMATS IN TRANSIT. Diplomats in transit who prove their status will not be subject to inspection and gauging of their luggage.

If there is a complaint about their content, a complaint may be made for selective review.

ARTICLE 8th. PROCESSING BEFORE THE MINISTRY OF FOREIGN AFFAIRS. The recognized beneficiary, through a special form established and prepared by the General Directorate of Customs, will obtain from the General Directorate of the Protocol of the Ministry of Foreign Affairs, the agreement to request admission with franchise.

To complete it, you must indicate:

a) The Diplomatic Mission or organization to which it belongs and the corresponding seal;

b) Name, rank and signature of the applicant;

c) Number of packages, weight and content;

d) Specification of the nature, characteristics and customs value of the goods in accordance with the tariff headings established for this purpose.

When it comes to a motor vehicle, in addition to the engine number, year, model, body type and chassis number if applicable, the optional equipment and its specified value must be indicated.

In addition, you must attach the invoices and knowledge or documents that take their place, of the indicated merchandise. These documents must come directly in its name or have been duly endorsed.

The Ministry will return these records and the Declaration of Admission with Franchise, duly processed, indicating the amount of the franchise that corresponds to the beneficiary. A copy of this declaration must be sent to the office in charge of controlling import authorizations or registrations, if required.

For use in the country, the vehicle admitted with excess must be registered in the General Directorate of Protocol of the Ministry of Foreign Affairs.

ARTICLE 9th. PROCESSING BEFORE CUSTOMS. The foreign beneficiary may present the Declaration of Admission with Franchise at any Customs where his merchandise is located, directly or through a customs intermediary-customs agent.

The declaration established by the General Directorate of Customs for the free admission of goods brought by diplomats, consuls, international officials or accredited entities, both at the time of their installation and at the time of use of their annual quota, will have the same legal effects. that the regular statement for consumption.

The goods that are processed by this means will remain in restricted provision until the requirements are met or the current rights to the date of the liquidation request, to make them freely available.

Customs will give the number that corresponds to it as clearance for consumption and will document the merchandise by making an external recognition of the packages. Only when the amount of these does not coincide with what was declared and a justified doubt arises regarding the nature of the merchandise, a physical inspection may be carried out. In these cases, the presence of the beneficiary or a member of the mission to which he belongs will be requested, so that he can witness the opening and corresponding capacity.

The tariff classification will be made by the item established for these purposes and the corresponding values will be declared globally in each item in accordance with current regulations. Customs may modify the values of motor vehicles based on their background; but you must apply the discounts that correspond to its use, as is done with similar merchandise in the normal declarations for consumption.

The appraiser will apply the corresponding deductible and will write down this fact and any other aspect that seems conducive to the identification of the merchandise in the declaration. It will send the information to the liquidation for its notification by state or personal, with which the interested party may carry out the release of his merchandise if was in a primary zone.

ARTICLE 10. LUGGAGE AND HOUSEHOLD OF COLOMBIAN BENEFICIARIES WHO *COME BACK TO THE COUNTRY.* The Colombian beneficiaries will dispatch to consumption without the payment of import duties, the luggage and household items that they bring to the country, through the special declaration of free admission.

ARTICLE 11. MOTOR VEHICLES OF COLOMBIAN BENEFICIARIES *RETURNING TO THE COUNTRY.* The motor vehicle that they bring, will be dispatched through a normal declaration for consumption and must accompany, in addition to the bill of lading and purchase invoices, a certificate from the Ministry of Foreign Affairs stating the mission or organization to which they belong or belonged. , name, rank, place and time of service abroad.

The motor vehicles of the aforementioned officials may enter the consumption without exceeding the following amounts:

a) For Ambassadors or Heads of Permanent Mission of International Organizations $45,000;

b) For all other diplomatic, consular or international civil servants with equivalent range US$33,000;

c) For administrative officials$18,000.

These amounts may be updated by resolution of the Ministry of Finance and Public Credit in the same proportion as the fees established in the sixth (6th) article above.

The assessor will make a reduction of twenty-five percent (25%) per full semester of service of the official abroad, on the import duties to be paid, based on the certificate from the Ministry of Foreign Affairs. Likewise, the appraiser will record any aspect that allows the identification of these merchandise and the beneficiary must pay the appropriate duties and taxes, will carry out the relevant release and the merchandise will remain at his free disposal.

The aforementioned franchises and procedures may be granted to these beneficiaries when they acquire a vehicle assembled in the country, and the regulatory procedure will be established by the General Directorate of Customs.

ARTICLE 12. The franchises of this Decree will apply to Colombian officials when their goods enter the country within six (6) months following the cessation of their functions abroad.

PARAGRAPH. The franchises provided for in this Decree will apply to merchandise whose clearance for consumption had not been perfected.

CANCELLATION OF THE REGIME

ARTICLE 13. CANCELLATION OF THE FOREIGN BENEFICIARIES REGIME. Merchandise brought in duty-free admission by foreign beneficiaries will be freely available in the following cases:

a) When two full years have elapsed, counted from the date on which Customs has accepted the initial clearance document. In this case, the goods will not cause import duties, sales tax or any other tax that may affect other shipments for consumption;

b) When after six (6) months of permanence of the merchandise in the country, counted in the manner indicated in the previous literal, while the beneficiary is in office, requests the Customs under whose jurisdiction it is located, the liquidation of the rights of importation and taxes in force on that date and pay the twenty-fourth (24th) parts corresponding to each of the months remaining to meet the two (2) years required to achieve free disposition;

c) When after six (6) months, counted in the manner indicated in subparagraph a) above, due to the end of the mission, the beneficiary must return to his place of origin and request Customs the settlement exempt from all import duties, tax to sales or others to obtain free disposal, provided that the term of mission is certified by the Ministry of Foreign Affairs.

ARTICLE 14. APPLICABLE RIGHTS. Rights of import and sales tax or its proportions that any beneficiary must pay, will correspond to those in force at the time Customs accepts the request for liquidation to obtain free disposal and the exchange rate will correspond to the day on which the respective payment voucher is issued, which will be notified like the other dispatches for consumption and must be paid within the period indicated by the general rules.

The value of the goods and motor vehicles will be that which corresponds to the date on which the free disposal is requested and the same discount rules for use and others that apply to the same goods must be applied, when they bring through normal declaration for consumption.

If the end of mission occurs before the goods are in the country for six (6) months, counted from the date of acceptance of the original clearance declaration, the beneficiary may obtain free disposal with full payment of import duties and taxes on imports. sales corresponding to normal merchandise.

Compliance with the above requirements will be sufficient for the beneficiary to be able to sell the merchandise admitted free of duty without the need to action of any competent authority.

ARTICLE 15. SALE OF VEHICLES AND MERCHANDISE FROM MISIONES *BENEFICIARIES*. The Ministry of Foreign Affairs may authorize the sale

of motor vehicles admitted free of charge to the service of the missions mentioned in numeral 2 of article 3, after a term of 4 years, counted from the date of the first clearance declaration processed before Customs and provided that are duly registered in the General Directorate of the Protocol of the Ministry of Foreign Affairs.

ARTICLE 16. SPECIAL SALE AND REPLACEMENT FOR *BENEFICIARIES* MISSIONS. The Ministry of Foreign Affairs may authorize the beneficiary missions for reasons of replacement, the sale of merchandise that forms part of the household goods, admitted with franchise.

Likewise, it may authorize, before the general term of four (4) years, for reasons of replacement, the sale of the vehicle in official use, having to pay import duties and other proportional taxes according to the following regulations:

1. If the vehicle has less than six (6) months of use, it will authorize its sale prior to the payment of all import duties, sales tax and any other tax from which it was exempted at the time of admission with franchise and that appear in the respective special clearance declaration that It will be the sole control document.

2 If the vehicle has more than six (6) months of use, it will authorize its prior sale the payment of the monthly aliquots that are missing to meet the general term of four (4) years (48 months) counted from the acceptance by Customs of the first clearance declaration and calculated on the amount of import duties and taxes in force on the date of acceptance by Customs clearance request to obtain free disposal.

ARTICLE 17. PRIOR REQUEST FOR LIQUIDATION. At the request of the beneficiary entity, the General Directorate of Customs will issue a settlement indicating the total amount of taxes to be paid at the time of the sale of the vehicle and will have a term of thirty (30) days counted from the date request to formulate the collection, which must be canceled within the period established by the general rules.

ARTICLE 18. CANCELLATION OF THE NATIONAL BENEFICIARIES REGIME. The Colombian diplomatic official permanently accredited in a mission abroad who returns to the country at the end of the mission may sell his household items and motor vehicle, with the sole possession of the declaration of admission with franchise or the normal declaration for consumption, as appropriate.

These sales will not require any authorization.

ARTICLE 19. SPECIAL CANCELLATION. The beneficiaries indicated in numerals 1 and 2 of article 3 of this Decree, in cases of theft or accident that means the total loss of the motor vehicle, will present to the corresponding Regional Customs a certification of the complaint made before the authorities or of the acceptance of the fact by the insurance company involved, so that the corresponding admission with franchise is cancelled. Based on said cancellation, the Ministry of Foreign Affairs may grant its consent for a new admission with franchise to be processed.

ARTICLE 20. SPECIAL REQUEST IN CASE OF DEATH. When due to death of a national or foreign diplomat, his widow or widower, or its heirs

If legitimate applicants apply for any franchise that would have corresponded to them according to the provisions of this Decree, the Ministry of Foreign Affairs will grant foreigners the one that corresponds to the end of the mission and nationals the one that corresponds to the maximum term of service abroad. The General Directorate of Customs of the Ministry of Finance and Public Credit will ensure its preferential application.

ARTICLE 21. TRANSFER OF VEHICLES UNDER ADMISSION WITH EXCESS. When a vehicle, dispatched by declaration of admission with franchise, is acquired by someone who has the same rights as the beneficiary, the beneficiary must obtain an authorization from the General Directorate of Protocol of the Ministry of Foreign Affairs, to carry out said transfer. This fact will transfer to the purchaser the benefits already accrued and will not cause the payment of import duties, sales tax or any other tax established. The General Directorate of Protocol will communicate the authorized transaction to the General Directorate of Customs so that it can update the information and carry out the corresponding control.

ARTICLE 22. CUSTOMS CONTROL. The General Directorate of Customs of the Ministry of Finance and Public Credit is responsible for the liquidation and collection of the taxes that are caused and the investigation of any infraction produced in the application of the norms here established.

ARTICLE 23. REPEALING. This Decree repeals Decree 3135 of 1956, Decree 232 of 1967, Decree 116 of 1982, Decree 2399 of 1986 and the articles 19, 20 and 21 of Decree 2057 of 1987.

ARTICLE 24. VALIDITY. This Decree is in force as of the date of its publication.

Publish and comply.

Given in Santa Fe de Bogotá, DC, on September 13, 1991.

DECREE 2740 OF1993

(December 31)

BY WHICH THE PROCEDURE IS ESTABLISHEDFOR THE REFUND OF TAX ON SALES TO DIPLOMATS, INTERNATIONAL ORGANIZATIONS AND DIPLOMATIC AND CONSULAR MISSIONS

The President of the Republic of Colombia, in exercise of the constitutional and legal powers, especially those conferred by numerals 11 and 20 of article 189 of the Political Constitution of Colombia and especially the provisions of article 851 of the Statute Tax,

DECREES:

Article 1. SALES TAX EXEMPTION TO DIPLOMATS, INTERNATIONAL ORGANIZATIONS AND DIPLOMATIC AND CONSULAR MISSIONS.

The Diplomatic and Consular Missions, the International Organizations and the Cooperation and Technical Assistance Missions, will enjoy exemption from sales tax in Colombia in accordance with the provisions of treaties, Agreements, Conventions or international agreements in force that have been incorporated into domestic legislation, and in the absence of these based in the strictest international reciprocity.

Article 2. COMPETITION. Requests for refunds for acquisitions made in Colombia to those responsible for sales tax must be signed by the Head of the Diplomatic Mission or by the Representative of the International Organization and submitted to the Special Administration of Taxes and National Customs of Large Taxpayers of Colombia. Santa Fe de Bogota.

Article 3rd. *INFORMATION A POSITION OF THE ADDRESS GENERAL OF PROTOCOL.* For the effectiveness of the return enshrined in this Decree, the General Directorate of Protocol of the Ministry of Foreign Affairs must inform the Special Administration of Taxes and Customs for Large Taxpayers of Santa Fe de Bogotá, the following:

1. General list of diplomatic and consular missions accredited before the Colombian Government.

2 General list of the International Organizations, and the Cooperation and Technical Assistance Missions accredited before the Government of Colombia covered by agreements that consecrate fiscal privileges, in force and incorporated into the internal legislation.

3. Name of the Heads of Mission or Representatives of International Organizations who are exercising the functions of the position, as well as the names of who take their place in case of absence or change of the owner.

Paragraph. The information referred to in this article must be provided to the Special Administration of Taxes and Customs for Large Taxpayers of Santa Fe de Bogotá no later than November 30 of the current year and will be updated. when changes are made to its content.

Article 4. REQUIREMENTS. The refund request must be submitted by filling out the corresponding format for bimonthly periods as stipulated in article 600 literal b) of the Tax Statute, indicating the basis that grants the respective exemption, annexing:

a) List of each of the invoices that give the right to exemption for the period object of the request, indicating the number of the invoice, name or company name, NIT, date of issue, value and amount of sales tax. Invoices that have been issued more than one year prior, counted from the date of presentation of the documentation before the Special Administration of National Taxes and Customs of Large Taxpayers of Santa FE de Bogotá, will not be admissible.

b) their overall value.

c) The amount of the tax to be refunded.

d) The proof that the invoices have discriminated the tax on the sales and meet the other requirements required by law.

In the case of International Organizations, the request must be signed by the Legal Representative of the respective Agency.

Article 5. TERM TO MAKE THE RETURN. The term to make the returns referred to in this Decree will be the one established in article 855 of the Tax Statute, counted from the filing of the application in due form before the Special Administration of National Taxes and Customs of Large Taxpayers of Santa Fe de Bogota.

Article 6. VERIFICATION OF RETURNS. The National Tax and Customs Administration of Large Taxpayers of Santa FE de Bogotá will verify within the term to return compliance with the legal requirements referred to in this Decree. For this purpose, it may carry out the pertinent investigations, cross-checking information with the suppliers that issued the invoices to verify compliance with the legal requirements set forth in article 617 of the Tax Statute, date of issue and amount of the tax on the paid sales.

Article 7. AUTO INADMISSION. When the applications do not meet the requirements indicated in article 4 of this Decree, the Administration will issue an Inadmissible Order within the same term indicated in article 858 of the Tax Statute counted from the filing of the application in due form before the National Tax and Customs Administration for Large Taxpayers of Santa Fe de Bogota.

Article 8. REJECTION OF THE APPLICATION. Refund requests must definitively rejected in the following cases:

1. When the invoices have an issue date of more than one year, having as a reference the date of filing of the application.

2. When the requested period has already been refunded.

3. When the applicant does not enjoy exemption.

4. When any of the causes contemplated in article 857 of the Tax Statute.

Article 9. TRANSITIONAL ARTICLE. From the effective date of this Decree and until March 30, 1994, the Special Administration of Taxes and Customs for Large Taxpayers of Santa FE de Bogotá must process the pending Refund requests referred to in this Decree that are at the General Directorate of Protocol of the Ministry of Foreign Affairs, regardless of the date of filing.

For this purpose, the General Directorate of Protocol must deliver to the Special Administration of Taxes and Customs for Large Taxpayers of Santa Fe de Bogotá, all requests for processing no later than February 28, 1994.

Article 10. VALIDITY AND REPEAL. This Decree is in force from the date of its publication and repeals articles 17 of Decree 1813 of 1984 and 37 of Decree 2076 of 1992, and other regulations that are contrary to it.

Publish and comply.

Given in Santa Fe de Bogotá, DC, on December 31, 1993.

DECREE 4660 OF 2007

(November 29)

THROUGH WHICH THE ARTICLE IS REGULATED 58 OF LAW 863 OF 2003.

The President of the Republic of Colombia

in the exercise of its constitutional and legal powers, especially those conferred by number 11 of article 189 of the Political Constitution and article 58 of Law 863 of 2003

DECREES:

Article 1. Information that must be provided by public or private entities that enter into cooperation and technical assistance agreements. As of January 1, 2008, public or private entities that enter into cooperation and technical assistance agreements for the support and execution of their programs or projects, with international organizations, must send to the National Tax and Customs Directorate, a monthly list of all current contracts charged to these agreements, in accordance with the provisions of article 58 of Law 863 of 2003;

The information must contain:

1. Identification of agreements in execution.

2. List of the contracts that are celebrated in development of each one of the agreements, indicating the total value and the term of execution of each one.

3. Monthly list of payments made under the contracts, discriminating:

a) Name, NIT and address of the beneficiary of the payment;

b) Payment concept;

c) Payment value;

d) Amount of withholdings at the source made for taxes administered by the Directorate of National Taxes and Customs;

e) Value of the deductible sales tax corresponding to the period that it is reported

Paragraph. The information referred to in this article must be sent no later than the last business day of the month following the reporting period.

Article 2. Validity and repeals. This decree is effective as of January 1, 2008, prior to its publication in the Official Gazette and repeals the provisions that are contrary, especially Decree 537 of 2004.

Publish and comply.

Given in Bogotá, DC, on November 29, 2007.

ALVARO URIBE VELEZ

The Minister of Finance and Public Credit,

Oscar Ivan Zuluaga Escobar

Rules
about visas

DECREE 4000 OF 2004

(November 30)

WHEREBY PROVISIONS ARE ENACTED ON THE ISSUANCE OF VISAS, CONTROL OF FOREIGNERS AND OTHER PROVISIONS REGARDING MIGRATION

GENERAL PRINCIPLES

Article 1. It is competition discretionary of National Government, founded in the principle of the sovereignty of the State, authorize the entry and permanence of foreigners to the country.

It corresponds to the Ministry of Foreign Affairs, through the Directorate of the Protocol and the Internal Work Group that the Minister of Foreign Affairs determines, of the Diplomatic Missions and Consular Offices of the Republic, depending on the case, grant, deny or cancel visas.

The requirements for the granting of each and every one of the classes and categories of visas will be established and modified by Ministerial resolution.

The Ministry of Foreign Affairs may, through an administrative act, expand or limit the power granted to Diplomatic Missions and Consular Offices, to issue visas.

Without prejudice to the provisions of international treaties, the entry, stay and/or exit of foreigners from the national territory shall be governed by the provisions of this decree and by the policies established by the National Government.

Article 2. In accordance with article 22 of Law 43 of 1993, the national Colombian who enjoys dual nationality, will be subject in the national territory to the Political Constitution and the laws of the Republic. Consequently, its entry into the territory, its stay and its departure from it must always be done as a Colombian, and it must identify themselves as such in all his civil and political acts.

Article 3. The Ministry of Foreign Affairs will set the migration policy. The National Intersectoral Migration Commission will act as the coordinating and guiding body of the National Government in the execution of the country's migration policy.

Immigration planning will consider the global or sectoral, public or private, development and investment plans to determine the activities, professions, installation areas, capital contributions and other contributions that foreigners must make. when it is considered advisable to admit it to the country through planned immigration programs.

Immigration will be regulated in accordance with the social, demographic, economic, scientific, cultural, security, public order, health and others of interest to the Colombian State.

The entry of immigrants will preferably be encouraged in the following cases:

31 In the case of people who, due to their experience, their technical, professional or intellectual qualification, contribute to the development of economic activities, scientific, cultural or educational utility or benefit for the country or that are incorporated into activities or programs of economic development or international cooperation defined by the Ministry of Foreign Affairs, for whose execution there are no trained nationals in the country or they are insufficient to meet the demand.

32 When they contribute capital to be invested in the establishment of companies of interest to the country or in productive activities that generate employment, increase or diversify exports of goods and services, or are considered of national interest.

Article 4. Immigration policy will prevent the irregular entry and stay of foreigners; as well as the presence of foreigners that compromises employment of national workers or that, due to their quantity and distribution in the national territory, configure a problem with political, economic, social or security implications that affect the Colombian State.

Article 5. The Visa is the authorization granted to a foreigner for the entry and permanence in the national territory granted by the Ministry of Foreign Relations.

Article 6. The permit to enter and stay in the national territory is the authorization issued by the Administrative Department of Security, DAS, to foreigners who do not require a Visitor Visa, in accordance with what is indicated by the Ministry of Foreign Affairs.

Article 11. The visa holder who wishes to extend his stay in the national territory, after fulfilling the requirements, must apply for the new visa at the Ministry of Foreign Affairs or at the Consular Offices of the Republic, prior to its expiration.

Article 12. The visa granted to the foreigner, whatever its class or category, it does not imply the unconditional admission of the latter to the national territory.

When for reasons of security or public order so determined by the Ministry of the Interior and Justice and the Administrative Department of Security, the foreigner must obtain permission from the latter entity to enter, transit or

stay in certain areas of the national territory.

Article 13. For the purposes of this decree, the foreign holder of a Resident Visa is considered to have a domicile in Colombia. Consequently, the term to obtain Colombian nationality by adoption will be counted from the date of issue of the corresponding Resident Visa.

Visa application

Article 14. The visa application must meet the requirements established by the Ministry of Foreign Affairs.

Article 15. Any inaccuracy in the data contained in the application will be denial causal or cancellation of the visa or un-admission to the national territory.

Article 19. Once a visa has been denied, a new application may only be submitted after six months, counted from the date on which the visa refusal was communicated, unless new elements are presented that give rise to receiving the new one. application before the mentioned time. Against the administrative act that denies the granting of a visa does not proceed any appeal.

Visa classes and categories

Article 21. The visas that are issued by virtue of what is established in this decree are of the following classes and categories:

LESSONS	CATEGORIES	CODE
1. COURTESY		CO
2. BUSINESS		NE
3. CREW		BA
4. TEMPORARY		
	- EMPLOYEE	TT
	- SPOUSE, OR PERMANENT PARTNER OF COLOMBIAN NATIONAL	CT
	- FATHER OR MOTHER OF A COLOMBIAN NATIONAL	PT
	- RELIGIOUS	TR
	- STUDENTTE	TE
	- SPECIAL	TS
	- REFUGEE OR ASYLUM	TA
7. RESIDENT		
	- AS A FAMILY MEMBER OF A COLOMBIAN NATIONAL	RN
	- QUALIFIED	RC
	- INVESTOR	RI
8. VISITOR		
	- SIGHTSEEING	TU
	- TECHNICAL VISITOR	VT
	- TEMPORARY VISITOR	VE

courtesy visa

Article 22. Without prejudice to the provisions of special regulations, the Courtesy Visa may be issued to the foreigner who intends to enter the national territory by the Internal Work Group determined by the Minister of Foreign Affairs.

up to a term of one (1) year and by Diplomatic Missions or Consular Offices up to a term of ninety (90) days, for multiple entries, in the following cases:

21 Due to their special intellectual, professional, cultural, academic, scientific, political, business, commercial, social, sports or artistic excellence;

22 Whoever intends to enter by virtue of exchanges, programs or activities related to the areas stated above and that are sponsored by public or private entities or institutions;

23 Officials, experts, technicians or employees of international organizations to whom the issuance of this visa has been established by virtue of an International Convention or Agreement;

24 To the foreigner, spouse or permanent partner of an official in the service from the Ministry of Foreign Affairs;

25 Abroad, a national of a country with which Colombia has signed or signs an Agreement, Agreement or Exchange of Notes regarding migration facilitation for entrepreneurs, legal representatives, directors, executives or businessmen;

26 To students, interns, teachers and language assistants who enter the country by virtue of Cooperation Agreements signed by the Government of Colombia with other countries or promoted by the Colombian Institute of Educational Credit and Technical Studies Abroad “Mariano Ospina Pérez”, Icetex;

27 To the holder of a diplomatic passport who enters the country to carry out different activities from the diplomatic ones;

28 To the foreigner who comes to the country under the auspices of the International Organization for Migration (IOM). The Courtesy Visa request must be made expressly by this international entity.

temporary visa

Article 28. The Temporary Visa may be granted for multiple entries by the Internal Work Group that the Minister of Foreign Affairs determines or the Consular Offices of the Republic, to the foreigner who intends to develop any of the activities included in this Title.

Paragraph. The validity of the Temporary Visa will end if the foreigner is absent from the national territory for a term greater than one hundred and eighty (180) continuous days.

Article 29. The Temporary Visa can only be requested for the first time in view of a Consular Office of the Republic.

It is understood that a Temporary Visa is requested for the first time, when:

21 The applicant has been the holder of a Temporary Visa and did not submit a new application in advance at the expiration of the visa of which he was the holder, or has not requested a safe-conduct.

22 The applicant has not held a Temporary Visa.

23 The applicant has been the holder of a permit or visa in the visitor category.

The Temporary Visa in the categories Father or Mother of a Colombian National, Spouse or Permanent Companion of a Colombian National, Student, Refugee or Asylee and Special Visas for Pensioners and Medical Treatment are excepted from the provisions of this article, or whoever holds the status of beneficiary in accordance with the provisions of this Decree, which may be issued for the first time in Colombia.

Temporary worker visa

Article 30. The Temporary Worker Visa may be issued by the Internal Group of Labor that the Minister of Foreign Relations determines or the Consular Offices of the Republic, in the following cases:

30.1 To the foreigner hired by a company, entity or institution, public or private, or natural person, who intends to enter or remain in the country to carry out work or activity in their specialty, or provide technical training.

30.2 To the foreigner who intends to enter or remain in the country, by virtue of academic agreements entered into between higher education institutions, or inter-administrative agreements in specialized areas. Said foreigner must verify their suitability, by presenting the duly validated title or work certifications when they are not professional.

30.3 To the foreign journalist contracted by a national or international news or information agency, or who has the quality of correspondent, which must be duly accredited.

30.4 To the foreign member of a contracted artistic, sports or cultural group by reason of their activity, when this is remunerated.

30.5 The foreigner appointed by a State body or entity.

30.6 To managers, technicians and administrative personnel of a foreign public or private entity, of a commercial or industrial nature, transferred from abroad, to cover specific positions in their companies.

30.7 To volunteers and missionaries who are not part of the hierarchy of a church, denomination, religious denomination, federation, confederation or association of religious ministers.

30.8 To the foreigner who without being linked to employment with company domiciled in Colombia, provides its services in the development of specific projects requested by companies domiciled in the national territory.

Article 31. The Temporary Worker Visa will be issued at the request and under the responsibility of the company, entity, institution or natural person that guarantees the visa petition.

Article 32. The Temporary Worker Visa may be granted for up to a term of two (2) years, for multiple entries, except for the visa established in numeral
30.4 of this Decree, which will be issued for up to six (6) months.

special temporary visa

Article 41. The Special Temporary Visa may be granted by the Internal Work Group that the Minister of Foreign Affairs determines or by the Offices

Consulates of the Republic, to foreigners who intend to enter the national territory in any of the following cases:

41.1 For medical treatment when it is not possible to perform it within the terms of the Visitor Visa or Entry Permit.

41.2 To intervene in administrative processes or judicial.

41.3 As a partner or owner of a commercial establishment or commercial company duly constituted and registered in the respective Chamber of Commerce domiciled in Colombia.

41.4 As a pensioner

41.5 As a rentier.

41.6 As a cooperator or volunteer of a non-profit entity or Non-Governmental Organization, NGO, or whoever is duly presented by an International Organization or a Diplomatic Mission, indicates that they are coming to the country to carry out work of social benefit, assistance, verification, observation or humanitarian aid.

41.7 For adoption procedures.

41.8 For the exercise of trades and activities of an independent nature.

41.9 For the exercise of occupations or activities not provided for in this Decree.

In the cases of numeral 41.6, the Consular Offices of the Republic must obtain prior authorization from the Ministry of Foreign Affairs to grant the visa.

Article 42. The validity of this visa will be up to one (1) year, for multiple entries, except in the cases of numerals 41.3 and 41.6 of this decree, in which may be granted for up to two (2) years with multiple entries.

visitor visa

Article 43. The Visitor Visa is classified as: Tourist Visitor, Temporary Visitor and Technical Visitor, and will be granted to nationals of countries that require a visa in accordance with what is established by the Ministry of Foreign Affairs, who intend to enter the country without the spirit of settling in it, with the purpose of developing any of the activities indicated in this article.

The Tourist Visitor Visa for the first time will be granted by the Consular Offices of the Republic to the foreigner who intends to enter the country with the sole purpose to develop or leisure activities. When it is not for the first time, it may also be granted by the Internal Group that the Minister of Foreign Affairs determines or the Consular Offices of the Republic. This Visa may be issued for up to a maximum term of one hundred and eighty (180) calendar days within the same calendar year and will allow its holder multiple entries.

The Temporary Visitor Visa for the first time will be granted by the Consular Offices of the Republic to the foreigner who intends to enter the country without the intention of settling in it, with the purpose of developing journalistic activities to cover

a special event, to the journalist, reporter, cameraman or photographer or to whoever is part of the journalistic team and accredits such quality; to make contacts and commercial or business activities; to participate in academic activities, in seminars, conferences, symposiums, exhibitions; non-regular courses or studies, which in any case do not exceed one academic semester; to present interviews in a personnel selection process, in public or private entities; for medical treatment; for unpaid sporting, scientific or cultural events.

In any case, as long as there is no employment relationship.

Similarly, Temporary Visitor Visa can be grant for the first time by the Consular Offices of the Republic to foreigners who come to provide training to public or private entities, in which case the validity may not exceed forty-five (45) calendar days within the same calendar year.

The Technical Visitor Visa for the first time, may be granted by the Consular Offices of the Republic, to the foreigner who intends to enter the country to provide urgent technical services to public or private entities, upon presentation of a letter of responsibility of the entity, in which the urgency of the required service is justified, in which case the term may not exceed forty-five (45) calendar days within the same calendar year.

Paragraph. Nationals of those countries with which Colombia has signed visa exemption agreements do not require a visa to enter the country as a visitor. Likewise, this visa will not be required for nationals of the countries that the Ministry of Foreign Affairs determines by Ministerial Resolution.

Article 44. The Temporary Visitor Visa will be issued for up to a maximum term of one hundred and eighty (180) calendar days within the same calendar year and will allow its holder multiple tickets.

In the event of having been granted the Visitor Visa or the Entry Permit and Permanence referred to in this decree, for a term less than the aforementioned, the Ministry of Foreign Affairs may issue a new visa or the Administrative Department of Security, DAS, may extend the permit until completing forty-five (45) days. calendar or until completing one hundred and eighty (180) calendar days within the same calendar year, as the case may be.

A new Technical Visitor Visa may be granted in exceptional cases, when the facts are notorious and public knowledge, up to the term that is necessary to solve the emergency.

The foreigner may remain in the country during the forty-five (45) or one hundred eighty (180) continuous calendar days or make use of them at intervals, within the same calendar year. It will be understood that the intervals will be subject to the validity of the visa, if it has already expired, the foreigner must request another type of visa to enter and stay in the country, before a Consular Office of the Republic.

Article 45. Foreign holders of Visiting Visas or Entry and Permanence Permits may not request the issuance of any other type of visa in the national territory, except as provided in Article 29 of this Decree.

Article 46. The foreigner who enters the country with a Visitor Visa or Entry and Permanence Permit as a visitor, in any of its categories, may not

earn salaries from natural or legal persons established in the country, nor may they carry out activities that are covered by another type of visa.

Entry and stay permit

Article 56. The Administrative Department of Security, DAS, may grant entry and stay permits to foreign visitors, when a visa is not required to enter the country, upon presentation of the exit ticket.

A foreign visitor who intends to enter the country without intending to settle in the national territory, in order to carry out activities in accordance with the following classification:

56.1 Tourist Visitor. To exercise rest or recreation activities, up to a term of ninety (90) calendar days, extendable up to ninety (90) more days within the same calendar year.

56.2 Temporary Visitor. For the foreigner who participates in academic activities, in seminars, conferences, symposiums, exhibitions; courses, non-regular studies that in any case do not exceed an academic semester; for medical treatment; to present interviews in a personnel selection process in public or private entities; to advance commercial and/or business contacts, up to one hundred and eighty (180) calendar days within the same calendar year.

In the cases of academic activities, seminars, conferences, symposiums, exhibitions, courses or studies, the foreigner must present a letter upon admission of invitation, registration or acceptance of the corresponding entity.

For the granting of a Temporary Visitor permit to foreigners who intend to participate in unpaid and free sports, scientific or cultural events, it will be required that the corresponding entity or institution issues an application in which it is responsible and justifies the presence of the foreigner in the National territory until by the end of the event, which must be presented at the time of entry of the foreigner to the country; Said permit may be extended, at the discretion of the Administrative Department of Security, DAS, without exceeding one hundred and eighty (180) calendar days within the same calendar year.

The Temporary Visitor permit to foreigners who intend to carry out activities of a journalistic nature to cover a special event, to the journalist, reporter, cameraman or photographer or whoever is part of a journalistic team and accredits such quality, may be granted up to the term of the event to be covered, extendable with prior written support before the Administrative Department of Security, DAS.

Likewise, a Temporary Visitor permit may be granted to foreigners who come to provide training to public or private entities, upon presentation of a responsibility letter of the entity before the Administrative Department of Security, DAS, justifying the presence of the foreigner. The term for which this permit will be granted will be up to thirty (30) calendar days, which may be extended for up to fifteen (15) more calendar days, in the same calendar year.

If the entity requesting the service considers the permanence of the foreigner who provides the training to be essential, it must submit an application for a Temporary Worker Visa referred to in article 30 of this Decree, before an Office Consulate of the Republic.

53 Technical Visitor Permit. A technical visitor permit may be granted to a foreigner who, in the opinion of the immigration authority, must enter the national territory to provide urgent technical services to public or private entities, upon presentation of a letter of responsibility from the entity in which it is justified the urgency of the service required.

Th The term for which this permit will be granted will be up to thirty (30) calendar days that may be extended for up to fifteen (15) more calendar days or up to the required term, when the facts that gave rise to your request are well-known and public knowledge. on the occasion of public order.

Paragraph. For the purposes of immigration control, calendar year will be understood the period between the first (1st) of January and the thirty-first (31st) of December. No foreigner who enters the country as a tourist or temporary visitor may stay for more than one hundred and eighty (180) continuous or discontinuous days within the same calendar year.

Article 57. People who must disembark in the national territory to go to another country, will only require the entry permit issued by the immigration authority for the necessary term, provided that they are foreigners who do not require a visa to enter the country.

Article 58. At any time, the immigration authority may limit the authorized stay or revoke the entry permit.

Article 59. In accordance with the provisions of international treaties, when In the case of border transit, for the entry of a foreign national or resident of a neighboring country, only the corresponding entry permit granted by the immigration authority will be required, upon presentation of the valid identification document in the country.

For the purposes of this Decree, border transit is understood as the circumstantial passage of persons residing in the border towns to Colombia, which authorizes the foreigner to move within the Colombian border zone. and by the sites determined by the National Government.

Registration, documentation and control

Article 74. The holders of a visa whose validity is greater than three (3) months, as well as the beneficiaries of the same in the terms of article 53 of this Decree, except the holder of a Preferential Visa, must register in the registry of foreigners that is kept in the Sub-directorate of Immigration or in the Sectional Directorates and Operational Posts of the Administrative Department of Security, DAS, within the term of fifteen (15) following calendar days counted from its entry into the country or from the date of issue of the visa if it was obtained within the national territory.

Article 75. The Administrative Department of Security, DAS, will take from each foreigner that must be documented in the national territory, a civil file that will contain the biographical data, a ten-print summary and the information that it determines.as immigration authority.

In the same way, it will keep a judicial record and a criminal record of foreigners bound and/or sentenced by a competent judicial authority.

Article 77. Based on the registration of foreigners, the Administrative Department of Security, DAS, will issue an identity document to those of legal age,

called Foreigner's Certificate.

A foreigner's identity card will be issued to holders of visas valid for more than three (3) months, except for visitors and Preferential Visa holders.

The foreigner's identity card issued to those who have been granted a valid visa indefinite must be renewed every five (5) years.

The characteristics of the foreign identity card will be established by the Department Security Administrative, DAS.

Article 78. Preferential Visa holders will identify themselves with the card issued by the Ministry of Foreign Affairs.

The holders of the other categories of visas that must register with the Administrative Department of Security, DAS, will identify themselves within the national territory with the respective foreigner identification card. Other foreigners will identify themselves with a valid passport.

Article 79. The foreigner who must register will inform the Administrative Department of Security, DAS, and the Ministry of Foreign Affairs about any change of residence or address within fifteen (15) calendar days. following the occurrence of the event.

Article 83. Any employer or contracting party that binds, hires, employs or admits a foreigner, must require the presentation of the visa that allows him to develop the activity, occupation or trade authorized therein. Likewise, you must request the foreigner's identity card when you are obliged to process it in compliance with immigration requirements and inform the Administrative Department of Security, DAS, in writing about your relationship, hiring or admission, and your dismissal or termination. of the contract, within fifteen (15) calendar days following the initiation or termination of work.

Contractors or entrepreneurs of public, cultural or sports shows are exempt from these obligations, when the permanence in the national territory is limited to the respective presentations, in which case they will require the corresponding visa and inform the Administrative Department of Security, DAS, in writing, at least five (5) calendar days before the performance of the show.

Any employer or contractor who admits a foreigner or allows it to carry out economic activities, it must provide the information requested by the immigration control authority.

Educational establishments must demand from foreign students of regular courses the visa that empowers them to carry out their studies before the start of classes and inform in writing to the Administrative Department of Security, DAS, of the enrollment of foreign students and of the definitive termination. of their studies within thirty (30) calendar days following their occurrence.

Every entity, federation, confederation, association, community, congregation or other entity of a religious nature must inform the DAS in writing of the entry and removal from abroad of the same, within fifteen (15) days calendar following its occurrence.

Article 84. All entity without cheer up of profit, Organization Nope Governmental

NGO, Diplomatic Mission or international organization, which admits a foreigner as a cooperant or volunteer, in order to carry out work of social benefit, assistance, verification, observation, humanitarian aid, must inform in writing the Administrative Department of Security, DAS, within fifteen (15) calendar days following the arrival or start of activities of the foreigner and the termination of them.

Article 85. The foreigner must exercise the profession, trade, activity or occupation authorized in the visa for the employer or contracting party that endorsed his application.

The Ministry of Foreign Affairs may make the change or authorize the exercise of another profession, trade, activity or occupation, prior compliance with the conditions established for the effect in accordance with the provisions of article 116 of this Decree. Said change must be communicated by the foreigner personally to the Administrative Department of Security, DAS, within the fifteen (15) calendar days following the same.

Article 86. The employer or contracting party, without prejudice to legal actions corresponding that arise from the fulfillment of the contract, must bear the costs of returning to the country of origin or to the last country of residence of the contracted or linked foreigner, as well as those of his family or beneficiaries at the termination of the contract or link or when the cancellation proceeds. visa, deportation or removal.

Its obligation will cease when the foreigner obtains a Temporary Visa in the categories spouse or partner of Colombian national, father or mother of Colombian national or resident visa.

RESOLUTION 255 OF 2005

(January 26)

WHEREBY THE REQUIREMENTS ARE ESTABLISHED FOR EACH AND EACH OF THE CLASSES AND CATEGORIES OF VISAS ESTABLISHED IN DECREE 4000 OF THE NOVEMBER 30, 2004, AND SOME PROVISIONS ABOUT ITS ISSUE

THE MINISTER OF FOREIGN AFFAIRS

in exercise of the powers conferred by Decree 4000 of November 30, 2004 and Decree 110 of January 21, 2004,

CONSIDERING

what of in accordance with the third paragraph of Article 1 of Decree 4000 of November 30, 2004, which establishes that: "... The requirements for the granting of each and every one of the classes and categories of visas will be established and modified by Ministerial resolution...".

RESOLVE

TITLE I
CHAPTER
I
General disposition

ARTICLE 1.- The requirements for each and every one of the classes and categories of the visas established in the Decree4000 of November 30, 2004, "By which provisions are issued on the issuance of visas, control of foreigners and other provisions on migration matters" will be those indicated in this Resolution.

CHAPTER II
From the visa application

ARTICLE 2º.- The visa application must be processed directly by the foreigner or by the entity or company where he provides his services, is linked to or sponsors it or by its legal representative, or by the duly authorized proxy with power of attorney and authenticated signature of the foreigner. and personal presentation of the proxy with the presentation of his identification document before the visa issuing office. In any case, the application form must be signed by the foreign applicant.

In the case of artistic, cultural or sports groups, the request may be processed by the person who has signed the respective contract as their representative or proxy. For purposes of the representation of the incapable, the current legal provisions.

CHAPTER III
General visa application requirements

ARTICLE 3º.- For each and every one of the classes and categories of visas, the applicant must meet the following general requirements:

1. Submit your passport with a minimum validity of three (3) months, in good condition, with blank pages, and a photocopy of the pages used. Or, valid travel document, as the case may be.
2. Fill out the application form correctly.
3. Attach the requirements for the visa you are requesting, as the case may be.
4. Attach two (2) recent photographs, front, color, light background.

PARAGRAPH. Civil birth records and of marriage, diplomas and certificates of study, and public documents issued abroad, must be duly translated into Spanish, authenticated before the respective Consular official of the Republic and legalized before the Ministry of Foreign Affairs, in accordance with the provisions of the rules of the Code of Civil Procedure or apostilled when appropriate.

CHAPTER IV
Special visa application requirements

FIRST SECTION
Of the courtesy visa

ARTICLE 4º.- The Courtesy Visa will be governed by the provisions of article 22 of Decree 4000 of November 30, 2004, and in addition to the requirements indicated

in Article 3 of this Resolution, the documents must be provided with which any of the qualities or conditions indicated in the numerals 22.2 to 22.8 of Article 22 of Decree 4000 of 2004.

NINTH SECTION
Of the special temporary visa

ARTICLE 12º.- The foreigner who requests a Special Temporary Visa, in addition to the requirements indicated in article 3º of this Resolution, must attach depending on the visa category, the following documents:

F. Cooperator or volunteer of a non-profit entity or Non-Governmental Organization, NGO, or who has been duly presented by an International Organization or by a Diplomatic Mission, must present the following documents:

1. Letter from the non-profit entity or Non-Governmental Organization, or from the Mission or International Organization, indicating the activity that the foreigner is coming to carry out in the country, the work program that is going to be carried out, specifying his duration, the planned agenda and the institutions and public or private entities with which you intend to meet.

2 Certificate of existence and legal representation of the non-profit entity or Non-Governmental Organization, issued by the competent Colombian authority, no more than 30 days in advance.

When the entity or NGO is not based in Colombia, the interested party must provide a certified copy of the deed of incorporation and representation, or of the instrument that proves its existence and representation, duly translated into Spanish and legalized before the corresponding Colombian Consulate, or apostilled, as the case may be, where it is stated that said organization has been in existence for not less than five (5) years, counted from the date of its constitution, or demonstrates that it has consultative status with the Economic and Social Council of the Organization of the Nations United.

The copy of the deed or document may be sent each calendar year by the entity or NGO to the Visa and Immigration Group, to support the visa applications.

If the entity or NGO complied with the requirement described above, a simple and informal photocopy of the aforementioned deed or document may be accepted.

The Visa and Immigration Group will keep the Colombian Consulates informed about the Non-Governmental Organizations or entities that present the deeds or documents accrediting the existence of the same, to facilitate the granting of Visas.

When the entity or NGO is based in Colombia, the interested party may provide an authenticated photocopy of the respective legal representation.

3. Documents with which the economic solvency of the foreigner is demonstrated.

4. Documents with which it is verified that the foreigner is a member of the Non-Governmental Organization.

5. Documents, records or certifications with which the foreigner proves previous experience and suitability, consistent with the activities that intends to develop in our country.

Documents from abroad must be duly legalized or apostilled, as the case may be.

ARTICLE 21º. This Resolution repeals the other regulations that are contrary to it, and prior to its publication in the Official Gazette, it will take effect on the same day in which Decree 4000 of November 30, 2004 enters into force.

PUBLISH AND ENFORCE

Given in Bogotá, DC, to the

CAROLINA BOAT
Foreign Minister


IMPRENTA
NACIONAL
DE COLOMBIA