

5 2001/06

MEMORANDUM OF UNDERSTANDING

Between

**THE UNITED NATIONS AND THE GOVERNMENT OF
NEW ZEALAND**

Contributing

RESOURCES TO THE UNITED NATIONS IN EAST TIMOR

Whereas, the United Nations Transitional Administration in East Timor (UNTAET) was established pursuant to the United Nations Security Council resolution 1272 (1999).

Whereas, at the request of the United Nations, the Government of New Zealand (hereinafter referred to as the "Government") has agreed to contribute personnel, equipment and services for an Aviation Unit to assist the United Nations Transitional Administration in East Timor (UNTAET) to carry out its mandate.

Whereas, the United Nations and the Government wish to establish the terms and conditions of the contribution.

Now therefore, the United Nations and the Government (hereinafter collectively referred to as the "Parties") agree as follows:

Article 1

Definitions

1. For the purpose of this Memorandum of Understanding, the definitions listed in Annex F shall apply.

Article 2

Documents constituting the Memorandum of Understanding

- 2.1.** This document, including all of its annexes, constitutes the entire Memorandum of Understanding (hereinafter referred to as the "Memorandum") between the Parties for the provision of personnel, equipment and services in support of UNTAET.

2.2. Annexes:

Annex A: Personnel

- 1.- Requirements
- 2.- Reimbursement.
- 3.- General conditions for personnel

Annex B: Major equipment provided by the Government

- 1.- Requirements and reimbursement rates
- 2.- General conditions for major equipment
- 3.- Verification and control procedures
- 4.- Transportation
- 5.- Mission usage factors
- 6.- Loss and damage
- 7.- Special case equipment

Annex C: Self-sustainment provided by the Government

- 1.- Requirements and reimbursement rates
- 2.- General conditions for self-sustainment
- 3.- Verification and control procedures
- 4.- Transportation
- 5.- Mission usage factors
- 6.- Loss and damage

Annex D: Performance standards for major equipment

Annex E: Performance standards for self-sustainment

Annex F: Definitions

Annex G: Guidelines for troop-contributors¹

¹ Annex G was previously distributed and is not included in the present document.

Article 3

Purpose

3. The purpose of this Memorandum is to establish the administrative, logistics and financial terms and conditions to govern the contribution of personnel, equipment and services provided by the Government in support of UNTAET.

Article 4

Application

4. The present memorandum shall be applied in conjunction with the Guidelines for Troop Contributors which is annexed hereto as annex G.

Article 5

Contribution of the Government

- 5.1 The Government shall contribute to UNTAET the personnel listed at annex A. Any personnel above the level indicated in this Memorandum shall be a national responsibility and thus not subject to reimbursement or other kind of support by the United Nations.
- 5.2 The Government shall contribute to UNTAET the major equipment listed in annex B. The Government shall ensure that the major equipment and related minor equipment meet the performance standards set out in annex D for the duration of the deployment of such equipment to UNTAET. Any equipment above the level indicated in this Memorandum shall be a national responsibility and thus not subject to reimbursement or other kind of support by the United Nations.
- 5.3 The Government shall contribute to UNTAET the minor equipment and consumables related to self-sustainment as listed in annex C. The Government shall ensure that the minor equipment and consumables meet the performance standards set out in annex E for the duration of the deployment of such equipment to UNTAET. Any equipment above the level indicated in this Memorandum shall be a national responsibility and thus not subject to reimbursement or other kind of support by the United Nations

Article 6

Reimbursement and support from the United Nations

- 6.1. The United Nations shall reimburse the Government in respect of the personnel provided under this Memorandum at the rates stated in annex A, article 2.
- 6.2. The United Nations shall reimburse the Government for the major equipment provided as listed in annex B. The reimbursement rates for the major equipment shall be reduced proportionately in the event that such equipment does not meet the required performance standards set out in annex D or in the event that the equipment listing is reduced.

- 6.3. The United Nations shall reimburse the Government for the provision of self-sustainment goods and services at the rates and levels stated at annex C. The reimbursement rates for the self-sustainment shall be reduced proportionately in the event that the contingent does not meet the required performance standards set out in annex E, or in the event that the level of self-sustainment is reduced.
- 6.4. The payment of the troop costs, the lease and self-sustainment rates will be calculated from the date of arrival of personnel or equipment in the mission area and will remain in effect until the date the personnel and/or equipment ceases to be employed in the mission area as determined by the Organization.

Article 7

General conditions

7. The Parties agree that the contribution of the Government as well as the support from the United Nations shall be governed by the general conditions set out in the relevant annexes.

Article 8

Specific conditions

- 8.1. Environmental condition factor: 1.0 %
- 8.2. Intensity of operations factor: 1.0%
- 8.3. Hostile action/forced abandonment factor: 0.0%
- 8.4. Incremental transportation factor:
The distance between the port of embarkation in the home country and the port of entry in the mission area is estimated at 6,505 kilometres. The factor is set at 1.75 % of the reimbursement rates.
- 8.5 The following locations are the agreed originating location and ports of entry and exit for the purpose of transportation arrangements for the movement of troops and equipment of the main party:

Troops:

Airport of entry/exit: Auckland
 Airport of entry/exit (in the area of operations): Dili/Suai

Equipment:

Originating location: Auckland
 Port of embarkation/disembarkation: Auckland
 Port of embarkation/disembarkation (in the area of operations): Dili/Suai

Article 9

Claims by third parties

9. The United Nations will be responsible for dealing with any claims by third parties where loss of or damage to their property, or death or personal injury, was caused by the personnel or equipment provided by the Government in the performance of services or any other activity or operation under this Memorandum. However, if the loss, damage, death or injury arose from gross negligence or wilful misconduct of the personnel provided by the Government, the Government will be liable for such claims.

Article 10

Recovery

10. The Government will reimburse the United Nations for loss of or damage to United Nations-owned equipment and property caused by the personnel or equipment provided by the Government if such loss or damage (a) occurred outside the performance of services or any other activity or operation under this Memorandum, or (b) arose or resulted from gross negligence or wilful misconduct by the personnel of the Government.

Article 11

Supplementary arrangements

11. The Parties may conclude written supplementary arrangements to the present Memorandum.

Article 12

Amendments

12. Either of the Parties may initiate a review of the level of contribution subject to reimbursement by the United Nations or to the level of national support to ensure compatibility with the operational requirements of the mission and of the Government. The present Memorandum may only be amended by written agreement of the Government and the United Nations.

Article 13

Settlement of disputes

- 13.1. UNTAET shall establish a mechanism within the mission to discuss and resolve amicably by negotiation in a spirit of cooperation differences arising from the application of this Memorandum.

- 13.2. Disputes that have not been resolved as provided in paragraph 13.1 above shall be referred by the Head of Mission to the United Nations Under-Secretary-General for Peacekeeping Operations. Upon receipt of such notice, the Under-Secretary-General shall institute discussions and consultations with representatives of the Government with a view to reaching an amicable resolution of the dispute.
- 13.3. Disputes that have not been resolved as provided in paragraph 13.2 above may be submitted to a mutually agreed conciliator or mediator appointed by the President of the International Court of Justice, failing which the dispute may be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the Chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within thirty days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedures for the arbitration shall be fixed by the arbitrators, and each Party shall bear its own expenses. The arbitral award shall contain a statement of reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article 14

Entry into force

14. The present Memorandum shall become effective on 21 February 2000. The financial obligations of the United Nations with respect to reimbursement of personnel, major equipment and self-sustainment rates start from the date of arrival of personnel or serviceable equipment in the mission area, and will remain in effect until the date personnel and/or equipment ceases to be employed in the mission area as determined by the Organization.

Article 15

Termination

15. The modalities for termination shall be as agreed to by the Parties following consultations between the Parties.

IN WITNESS WHEREOF, the United Nations and the Government of New Zealand have signed this Memorandum.

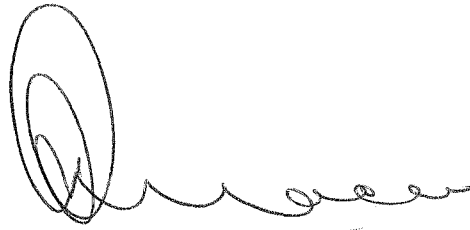
Signed in New York, on 27/04/01 in two originals in the English language.

For the United Nations

For the Government of New Zealand



Mr. Michael Sheehan
Assistant Secretary-General
for Logistics, Management and Mine Action
Department of Peacekeeping Operations



H.E. Mr. Don MacKay
Ambassador Extraordinary and
Plenipotentiary
Permanent Representative of New Zealand