

7 (2008) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2008 Nr. 85

A. TITEL

*Briefwisseling houdende een verdrag tussen het Koninkrijk der
Nederlanden en de Republiek Somalië betreffende de steun van
Nederlandse strijdkrachten bij de bescherming van humanitaire hulp
voor Somalië tegen piraterij;
Nairobi, 1 april 2008*

B. TEKST

Nr. I

THE TRANSITIONAL FEDERAL GOVERNMENT OF
THE SOMALI REPUBLIC
OFFICE OF THE PRIME MINISTER

Nairobi, 28 March 2008

Ref. OPM 198/03/08

Excellency,

Noting that the World Food Programme (WFP) is a key humanitarian actor in Somalia, where it sends 80% of its assistance by sea. The security of its vessels is of fundamental importance in this regard for the entire humanitarian community in Somalia,

Taking note of United Nations Security Council resolution 1772 (2007) expressing concern at the upsurge in piracy off the Somali coast, and the joint press release issued on 10 July 2007 by the International Maritime Organization and the World Food Programme,

Taking into consideration the incidents of armed robbery committed in the territorial waters of Somalia, the Republic of Somalia requests that the Kingdom of the Netherlands lend its support for the protection of WFP contracted ships bound for Somalia,

Considering that, in order to accomplish this, the Kingdom of the Netherlands must have also obtained the agreement of the Flag State(s) of the WFP-contracted ships,

I have the honour therefore, writing on behalf of the Republic of Somalia, of making the following proposal to you:

The present provisions have been defined to meet the needs of protection of World Food Programme-contracted ships in the territorial waters of Somalia and their application is limited to the period of the presence of the Netherlands armed forces (further: the Netherlands forces) deployed in this connection on the territory of the Republic of Somalia.

The Netherlands forces will comprise Netherlands military personnel on board the Royal Netherlands Navy vessel(s) charged with accompanying WFP ships and Netherlands military personnel on board WFP-contracted ships.

The Royal Netherlands Navy vessel(s) charged with accompanying WFP-contracted ships shall be authorised to enter Somali territorial waters at any time during this three-month period, doing so with all weapons and munitions for security appropriate in the context of this mission.

For the protection of World Food Programme-contracted ships in its territorial waters, the Republic of Somalia authorises the Netherlands forces to take all necessary steps, including the proportionate use of force. In this connection, the Netherlands forces shall assess the correct match between the means to be employed and the manner in which they are to be employed, at whatever level.

During their presence in the territorial waters of the Republic of Somalia, the Netherlands forces shall comply with all laws and customs in force in the Republic of Somalia.

The Netherlands forces present on Somali territory under the terms of the present agreement shall enjoy personal inviolability, immunity from prosecution in Somali criminal, civil and administrative courts and immunity from execution.

The Republic of Somalia and the Kingdom of the Netherlands give hereby mutual undertakings to waive all recourse for the purpose of obtaining redress for damage or injury possibly caused to their property or personnel, including damage or injury involving death, in connection with the presence of Netherlands forces or the execution by those forces of their tasks.

The Republic of Somalia waives all recourse against the Kingdom of the Netherlands in the event of prejudice caused to third parties by Dutch forces in the execution of their tasks. In the event of legal action instituted in connection with such prejudice, the Republic of Somalia shall stand in lieu of the Kingdom of the Netherlands in the proceeding. In all events, the Republic of Somalia shall pay any compensation due as redress for prejudice caused. If the latter is attributable to Netherlands forces alone in the course of the execution of their tasks, the Kingdom of the Netherlands shall refund the amount of the compensation to the Republic of Somalia without delay. If both Governments are jointly responsible for the prejudice suffered by third parties or if that prejudice has been caused by their armed forces without it being possible to attribute it to one or other of those forces, the amount of the compensation shall be shared equally between them.

All equipment of the Netherlands forces shall be exempt from all tax and duty on entry to and on exit from the territory of the Republic of Somalia.

The Somali authorities shall accept without delay the handing over by Netherlands forces of all equipment seized.

Should the Netherlands forces detain any individual who has committed acts of armed robbery against World Food Programme-contracted ships, the Netherlands forces shall guard them and ensure their safety in accordance with the relevant provisions of international law, as long as the Netherlands forces maintains effective control over them.

The Kingdom of the Netherlands authorities may further decide, in accordance with international law, on possible further investigation and prosecution of such individuals, as well on any other legal issue stemming in any way from the effective control the Netherlands forces maintains over such individuals.

The death of any member of Netherlands forces personnel on the national territory or in the territorial waters of the Republic of Somalia shall be declared to the Somali authorities.

The Netherlands forces are authorised to have in their possession and to make use of an autonomous transmission system in territorial waters

for the purposes of protection of World Food Programme ships. Access to the radio frequency spectrum is granted to the Netherlands forces free of charge.

Any dispute between the parties concerning the implementation or interpretation of the provisions hereof shall be settled exclusively by negotiation.

The Republic of Somalia and the Kingdom of the Netherlands may independently terminate this agreement in writing, giving such advance notice as is necessary for the Royal Netherlands Navy and the Netherlands forces to leave the Republic of Somalia and its territorial waters in an orderly fashion.

Expiry of the present agreement shall not discharge the Parties of obligations created during its implementation.

The provisions contained in this exchange of letters may be communicated to any third State that should so request from either of the parties.

I should be grateful if you would inform me whether the provisions set out above meet with the approval of the Kingdom of the Netherlands. If so, the present letter, and your reply, shall constitute an agreement entered into by the Republic of Somalia and the Kingdom of the Netherlands concerning the protection tasks to be performed by the Netherlands forces with regard to World Food Programme ships in the territorial waters of the Republic of Somalia,

The Republic of Somalia gives consent to the agreement to take effect on the date of your reply and will expire no later than twelve months thereafter.

Please accept, Excellency, the assurances of my highest consideration.

For the Republic of Somalia,

NUR HASSAN HUSSEIN
Prime Minister

*To the Ambassador of the Kingdom of the Netherlands,
Nairobi,
Kenya*

Nr. II

ROYAL NETHERLANDS EMBASSY

Nairobi, 1 April 2008

Your Excellency,

I hereby acknowledge receipt of your letter of 28 March 2008, containing the following:

(Zoals in Nr. I)

I have the honour to inform you of the approval of my Government to the provisions set out above. Given this, the present agreement shall be in force from the date of this reply.

KEES VAN BAAR
Chargé d'Affaires a.i.
Royal Netherlands Embassy

*H.E. Nur Hassan Hussein
Prime Minister of The Transitional Federal Government
of the Somali Republic*

*c/o H.E. Mohammed Ali Nur
Ambassador of the Somali Republic
Jabavu Rd., Hurlingham
Nairobi*

Op 1 april 2008 is, in aanvulling op bovenstaand verdrag, eveneens bij briefwisseling een verdrag totstandgekomen tussen het Koninkrijk der Nederlanden en de Comoren betreffende de steun van Nederlandse strijdkrachten bij de bescherming tegen piraterij van een schip onder Comorese vlag dat humanitaire hulp aan Somalië levert. De tekst van de brieven luidt als volgt;

Nr. I

ROYAL NETHERLANDS EMBASSY

Dar Es Salaam, 25 March 2008

Excellency,

Noting that the World Food Programme (WFP) is a key humanitarian actor in Somalia, to which it sends 80% of its assistance by sea;

Considering that the security of its vessels is of fundamental importance in this regard for the entire humanitarian community in Somalia;

Taking into consideration the statements of the President of the United Nations Security Council on 15 March 2006 in support of Resolution A.979 of the International Maritime Organization (IMO) dated 23 November 2005;

Conscious of the joint call made on 10 July 2007 by the IMO and the WFP for concerted international action to resolve the problem of piracy and armed robbery directed against ships in waters off the Somali coast;

Taking note of resolution 1772 (2007) of the United Nations Security Council, expressing its concern at the upsurge in piracy off the Somali coast, and the joint press release issued on 10 July 2007 by the International Maritime Organization and the World Food Programme;

Considering the persistent incidents of armed robbery committed in the territorial waters of Somalia, and responding to the request made by the Government of the Republic of Somalia and recent requests from the WFP, the Netherlands is willing to lend its support to the Somali government for the protection of WFP-contracted ships bound for Somalia;

I have the honour therefore, speaking on behalf of my Government, of making the following proposal to you:

The present provisions have been defined to meet the needs of protection of World Food Programme-contracted ships in the territorial waters of Somalia and their application is limited to the period of the presence of Dutch Forces deployed in this connection on the territory of the Republic of Somalia.

For the protection of the ships of the Comoros, being the Flag State of the ships chartered by the World Food Programme, the Government of the Comoros, as Flag State:

a) in conjunction with the owners of the ships flying its flag, shall facilitate the embarkation of Dutch Forces on ships chartered by the World Food Programme;

b) in conjunction with the owners of the ships flying its flag, shall facilitate cooperation between the Dutch Forces, including those on board such ships, and the ship's crew;

c) shall authorise the Dutch Forces to take all necessary steps, including the proportionate use of force. In this connection, the Dutch Forces shall assess the correct match between the means to be employed and the manner in which they are to be employed, at whatever level.

The Government of the Comoros, as Flag State, authorises the possession of weapons and munitions for security by Dutch military personnel present on board ships chartered by the World Food Programme and flying its flag.

The Government of the Comoros, as Flag State, grants to Dutch military personnel present on board its WFP-contracted ships for the purpose of their protection, personal inviolability and immunity from legal proceedings in its criminal, civil and administrative courts, in addition to immunity from execution.

The Government of the Comoros, as Flag State, waives all rights of recourse against the Government of the Kingdom of the Netherlands in the event of prejudice caused to third parties and its nationals by Dutch Forces in the execution of their tasks. In the event of legal action instituted in connection with such prejudice, the Government of the Flag State shall stand in lieu of the Government of the Kingdom of the Netherlands in the proceeding. In all events, the Government of the Flag State shall pay any compensation due as redress for prejudice caused. If the latter is attributable to Dutch Forces alone in the course of the execution of their tasks, the Government of the Kingdom of the Netherlands shall refund the amount of the compensation to the Government of the Flag State. If both Governments are jointly responsible for the prejudice suffered by third parties, the amount of the compensation shall be shared equally between them.

The Comoros, as Flag State, agrees to the handing over to the Somali authorities by Dutch Forces of all equipment confiscated from individuals having committed acts of armed robbery on board its ships, unless the Dutch authorities wish to proceed otherwise.

The Comoros, as Flag State, agrees to the handing over to the Somali authorities by Dutch Forces of all individuals having committed acts of armed robbery on board its ships, unless the Dutch authorities wish to proceed otherwise.

1. In the event the Dutch Forces hand over individuals to the Comoros, the Netherlands make it a condition for such handing over of individuals to the Comoros, as Flag State, that the latter give assurances that in cases where capital punishment may be incurred, the death penalty will neither be sought nor applied to the individuals handed over.

2. The authorities of the Comoros, as Flag State, undertake to ensure the transfer, guarding and safety of the individuals handed over by the Dutch authorities, abiding by applicable international law, and specifically international human rights law, assuring themselves that no individual handed over to them is subjected to torture or any other cruel, inhuman or degrading treatment.

The death of any member of the personnel of Dutch Forces on board a ship of the Flag State shall be declared to the authorities of that State, which hereby agrees to hand over the body to the Dutch authorities without delay.

Any dispute between the parties concerning the implementation or interpretation of the provisions hereof shall be settled exclusively by negotiation.

The Government of the Comoros as Flag State, and the Government of the Kingdom of the Netherlands may terminate this agreement in writing, giving a short period of advance notice.

Expiry of the present agreement shall not discharge the Parties of obligations created during its implementation.

The provisions contained in this exchange of letters may be communicated to any third State that should so request from either of the parties.

I should be grateful if you would inform me whether the provisions set out above meet with the approval of your Government. If this is the case, the present letter, and your reply, shall constitute the agreement entered into by our two Governments concerning the protection tasks to be performed by Dutch Forces with regard to World Food Programme-contracted ships on inbound or outbound journeys between the territorial waters of the last port of call and their entry into the port of destination in Somalia, and that agreement shall take effect on the date of your reply.

Please accept the assurances of my highest consideration.

KAREL VAN KESTEREN
Ambassador

*H.E. Mr. M. Houmadi Abdallah
Minister of Foreign Affairs Ad interim
of the Republic of the Comoros*

Nr. II

MINISTRY OF FOREIGN AFFAIRS OF THE REPUBLIC OF THE
COMOROS

Moroni, 1 April 2008

Excellency, Mr van Kesteren

I hereby acknowledge receipt of your letter of March 25, 2008, the text of which is as follows:

(Zoals in Nr. I)

I have the honour to inform you of the agreement of my Government to the provisions set out above. Given this, the present agreement shall be in force from the date hereof.

M. HOUMADI ABDALLAH
Minister of Foreign Affairs
ad interim

*H.E. Mr. Karel van Kesteren
Ambassador*

*Royal Netherlands Embassy
Dar Es Salaam*

D. PARLEMENT

De in de brieven vervatte verdragen behoeven ingevolge artikel 7, onderdeel c, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring van de Staten-Generaal.

G. INWERKINGTREDING

De bepalingen van het in brieven vervatte verdrag met Somalië zijn ingevolge het gestelde in de op één na laatste alinea van brief Nr. I en van brief Nr. II in werking getreden op 1 april 2008.

Ingevolge het gestelde in de op één na laatste alinea van brief Nr. I, laatste regel, van het in brieven vervatte verdrag zal het verdrag uiterlijk 1 april 2009 buiten werking treden.

Wat betreft het Koninkrijk der Nederlanden, geldt het in brieven vervatte verdrag alleen voor Nederland.

De bepalingen van het in brieven vervatte verdrag met de Comoren zijn ingevolge het gestelde in de op één na laatste alinea van brief Nr. I en de laatste alinea van brief Nr. II in werking getreden op 1 april 2008.

Wat betreft het Koninkrijk der Nederlanden, geldt het in brieven vervatte verdrag alleen voor Nederland.

J. VERWIJZINGEN**Verwijzingen**

- | | |
|---------------------|---|
| Titel | : Verdrag tussen de Staten die partij zijn bij het Noord-Atlantisch Verdrag, nopens de rechtspositie van hun krijgsmachten;
Londen, 19 juni 1951 |
| Tekst | : <i>Trb.</i> 1951, 114 (Engels en Frans)
<i>Trb.</i> 1953, 10 (vertaling) |
| Laatste <i>Trb.</i> | : <i>Trb.</i> 2001, 28 |
| Titel | : Noord-Atlantisch Verdrag;
Washington, 4 april 1949 |
| Tekst | : <i>Trb.</i> 1949, 355 (Engels, Frans en vertaling) |
| Laatste <i>Trb.</i> | : <i>Trb.</i> 2004, 154 |
| Titel | : Verdrag inzake de Internationale Maritieme Organisatie;
Genève, 6 maart 1948 |

Tekst : *Trb.* 1949, 93 (Engels en Frans)
 Trb. 1953, 104 (vertaling)
Laatste *Trb.* : *Trb.* 2008, 26

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de minister van Buitenlandse Zaken bepaald dat de in brieven vervatte verdragen zullen zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *zevende* mei 2008.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN