

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1991 Nr. 91

A. TITEL

*Briefwisseling houdende een overeenkomst tussen het Koninkrijk der Nederlanden en de Staat Israël inzake de stationering van een Nederlandse Patriot-eenheid in Israël;
Tel Aviv, 22 februari/3 maart 1991*

B. TEKST

Nr. I

ROYAL NETHERLANDS EMBASSY

No. 385

Tel Aviv, 22 February 1991

Your Excellency,

Upon request of His Excellency Mr H. van den Broek, Minister of Foreign Affairs of the Netherlands, I have the honour to propose an agreement between the Government of the Kingdom of the Netherlands and the Government of the State of Israel in the following terms:

Exchange of Notes between the Government of the Kingdom of the Netherlands and the Government of the State of Israel

The Government of the Kingdom of the Netherlands (hereinafter referred to as: "the NL") and the Government of the State of Israel (hereinafter referred to as: "the GOI"), following friendly discussions between the Governments, have agreed as follows:

I. PURPOSE

1. A Netherlands Patriot Missile System (PMS) with logistic facilities (spared and maintenance equipment) and related Netherlands personnel will be stationed in Israel to strengthen Israeli Air Defence. The details of the PMS are listed in Annex A.
2. This agreement covers the basic terms and conditions of the stationing of the PMS and Netherlands personnel.
3. Implementing arrangements may be concluded between the competent authorities of the Parties.

II. ORIGINATING GOVERNMENT

It is understood that the transfer of the PMS to Israel and the release to Israel of PMS technical data are subject to the prior authorisation of the US Government. The NL will keep custody over all crypto equipment items at all times.

III. RELEASE OF INFORMATION

1. It is understood and agreed by the Parties to this Agreement that any release of information related to the PMS and the stationing of NL personnel in Israel is subject to the prior coordination between the Parties.
2. Procedures for handling classified and other information relating to the PMS, will be laid down in a mutual agreed implementing arrangement.

IV. PHYSICAL SECURITY

1. The competent Israeli authorities will provide the physical security of the PMS and the Netherlands personnel in close cooperation with the competent Netherlands authorities.
2. GOI is responsible for the air defence of the PMS.

V. TRANSPORT

1. Shipping of the PMS from a naval port in Germany and initial air transportation of the NL personnel from Germany to and from Israel and inland transportation inside Israel will be provided through the GOI. The NL will assist the GOI for the transportation as above mentioned.
2. Transportation of the logistic support and maintenance or in exceptional circumstances, the directly related personnel, will be provided by the GOI, subject to coordination.

3. The GOI shall be responsible for handling the customs clearances which shall be needed for the PMS and the personnel.
4. All other transportation of personnel to and from Israel will be provided by the NL Government.
5. Local transportation in Israel will be dealt with in an implementing arrangement.

VI. SUPPORT

1. The GOI will provide host nation support to the PMS and the NL personnel, as shall be agreed by the Parties.
2. The NL shall send to Israel the necessary personnel for the deployment, stationing, operation, maintenance and services of the PMS. The Parties may agree at a later time to reduce the number of the NL personnel necessary for the operation of the PMS.
3. The NL will provide the logistic support, maintenance and services, to the PMS and its related systems, subsystems and equipment during the stationing in Israel.
4. Personnel required for logistic support and maintenance for the PMS will be provided by the NL Government on a best effort basis.
5. Israel will provide re-supply of missiles.

VII. COMMAND AND CONTROL

1. Operational and tactical command and control over the PMS will be exercised by the competent authorities of the GOI. Full command over Netherlands personnel will be retained by the Netherlands Government.
2. Details of command and control and operations will be dealt with in Annex B.

VIII. COMMUNICATIONS

The GOI will provide communications and frequency support as agreed in an implementing arrangement.

IX. STATUS OF PERSONNEL

1. NL personnel will respect the laws of Israel and will abstain from any activity inconsistent with the spirit of this Agreement. In particular, NL personnel will refrain from interfering in the internal affairs of Israel. The NL Government will take all necessary measures to that end.

2. In case of an alleged violation of the Israeli laws by NL personnel, the competent Israeli and NL authorities will cooperate to the fullest extent possible in order to investigate the violation concerned.

3. Subject to the provisions of this article,

a. NL Government military authorities shall have the right to exercise within Israel all criminal and disciplinary jurisdiction conferred on them by the law of the NL over NL personnel; and,

b. the Israeli authorities shall have jurisdiction over NL personnel with respect to offenses committed within Israel and punishable by the law of Israel.

4. a. NL authorities shall have the right to exercise exclusive jurisdiction over NL personnel with respect to offenses committed within Israel which are punishable by the law of the NL, but not punishable under the law of Israel.

b. The Israeli authorities shall have the right to exercise exclusive jurisdiction over NL personnel with respect to offenses committed within Israel which are punishable by the law of Israel, but not punishable under the law of the NL.

5. In cases where the right to exercise jurisdiction is concurrent, the following procedures will apply:

a. the military authorities of the NL shall have the primary right to exercise jurisdiction over NL personnel in relation to:

(1) offenses arising out of an act or omission done in the performance of official duty; or

(2) offenses committed solely against the property or security of the NL, or offenses solely against the person or property of other NL personnel.

b. in the case of any other offense, the authorities of Israel shall have the primary right to exercise jurisdiction over NL personnel.

c. for the purpose of this article, offenses against security shall include treason, sabotage, espionage, or violation of any law regarding official secrets related to national defense.

6. In no case will a death sentence be carried out on a NL military person by the GOI.

7. Recognizing that it is the primary responsibility of the NL to maintain good order and discipline in its armed forces, Israel will upon the request by the NL, forwarded within 25 days after its discovery of the commission of the offense, waive its primary right to exercise jurisdiction over NL personnel, except in cases where the authorities of Israel after special consideration, determine that its interests require the exercise of Israeli jurisdiction. Any such determination will be communicated to the NL authorities within 25 days after the authorities of Israel receive the NL request.

8. NL military personnel shall not be subject to the civil jurisdiction of the courts of Israel for acts or omissions done in the performance of their official duties.

9. In any case where NL personnel is involved in legal procedures in Israel, the authorities of both Parties will cooperate to the fullest extent and will establish further arrangements and procedures, if required.

X. TAXES AND DUTIES

1. The PMS and goods and material for the use of the PMS will be imported and exported free of taxes and duties.

2. Subject to the Israeli law, NL personnel may import and export goods for personal use and consumption and personal effect free of taxes and duties.

3. Subject to Israeli law, goods and services purchased locally for official use will be delivered free of taxes and duties.

XI. OWNERSHIP OF EQUIPMENT

It is agreed by the Parties that the PMS and the related systems and sub-systems are, and shall remain, the property of the NL. After termination of this Agreement, the PMS with its logistic facilities may be withdrawn by the NL Government at any time it wishes.

XII. FINANCIAL ARRANGEMENTS

1. The total costs for the deployment, operation (including costs of expended missiles) and maintenance of the PMS will be borne by the Netherlands Government.

2. Transportation, as mentioned in art. V., para. 1, 2 and 5 will be borne by the GOI; all other transportation costs will be borne by the NL.

3. The costs for salary and allowances of NL personnel will be borne by the NL Government.

4. The costs for host nation support which shall be agreed upon, will be borne by the GOI.

5. The costs for communications as mentioned in article VIII between Israel and the Netherlands will be borne by the GOI.

XIII. CLAIMS

1. Parties will mutually waive all claims with regard to injury, including death, to personnel of their respective armed forces and/or damage to their property. This waiver will also apply where the PMS is wholly or partly destroyed as a result of normal operational or technical use or as a result of a willful or negligent act of NL personnel. In other cases of destruction in whole or in part of the PMS, the Parties will negotiate about the financial consequences.

2. The GOI will indemnify and hold the NL Government harmless for any third party claims, which may arise as a consequence of the operation of the PMS in Israel, unless the damage arises from gross negligence or willful misconduct of NL personnel. The claims of the employees of both Parties will be considered as third party claims. In cases of gross negligence or willful misconduct of NL personnel in the performance of their official duties, the NL Government will settle the claims in consultation with the GOI.

3. All other damages will be dealt with in the spirit of the agreement by negotiations.

XIV. CONSULTATION

Each Party may at any time request consultations. The other Party will promptly abide by such request.

XV. DISPUTE SETTLEMENT

All disputes arising out of this Agreement will be settled by negotiations between duly authorised representatives of the Parties.

XVI. AMENDMENTS

This Agreement may be amended at any time, subject to mutual written consent.

XVII. TERMINATION

1. The NL Government will endeavour to keep the PMS stationed in Israel for the duration of the crisis in the Gulf, however, each Party may denounce the agreement by written notification at any time. In case of denunciation by the NL Government, the Agreement will terminate on the date to be determined by the NL Government, that will endeavour to respect a two month period of prior notice.

2. After termination of the Agreement, all matters arising out of the transport, stationing and operation of the PMS will continue to be governed by this Agreement, until the final settlement of such matters.

XVIII. MISCELLANEOUS

1. The annexes attached to this Agreement form part of it.¹⁾
2. In case of differences between this Agreement and the implementing arrangements and/or Annexes the Agreement will prevail.

If the foregoing is acceptable to your Government, I have the honour to propose that this note and your note in reply shall constitute an Agreement between our two Governments, which shall enter into force on the date of receipt of your reply.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

(sd.) J. N. J. B. HORAK

Dr. J. N. J. B. Horak,
Ambassador of the Netherlands

*To: His Excellency
Mr David Levy
Deputy Prime Minister and
Minister of Foreign Affairs
of the State of Israel
Jerusalem*

¹⁾ De bijlagen zijn niet afgedrukt.

Nr. II

DEPUTY PRIME MINISTER
AND MINISTER OF FOREIGN AFFAIRS

Jerusalem, 3 March, 1991

Your Excellency,

I have the honour to acknowledge receipt of your note dated 22 February 1991, which reads as follows:

(zoals in Nr. I)

In reply, I have the honour to inform Your Excellency that the foregoing is acceptable to the Government of the State of Israel, who therefore agrees that Your Excellency's note and this note of reply shall constitute an Agreement between our two Governments, which shall enter into force on the date of this note.

Accept, Excellency, the assurances of my highest consideration.

(sd.) D. LEVY

David Levy

*His Excellency
Dr. J. N. J. B. Horak
Ambassador of the Netherlands
in Israel*

D. PARLEMENT

De overeenkomst behoeft niet de goedkeuring der Staten-Generaal ingevolge additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet, juncto artikel 62, eerste lid, onderdeel c, van de Grondwet naar de tekst van 1972.

G. INWERKINGTREDING

De bepalingen van de in de brieven vervatte overeenkomst zijn ingevolge het gestelde aan het slot van brief Nr. II op 3 maart 1991 in werking getreden.

Zij zijn op 16 april 1991 buiten werking getreden op grond van op 16 april en 13 mei 1991 gewisselde brieven waarvan de tekst in rubriek J hieronder is afgedrukt.

Wat het Koninkrijk der Nederlanden betreft, gold de overeenkomst alleen voor Nederland.

I. OPZEGGING

De overeenkomst is op 16 april 1991 opgezegd door het Koninkrijk der Nederlanden.

J. GEGEVENS

Op 16 april en 13 mei 1991 zijn in Tel Aviv brieven gewisseld inzake de beëindiging van de onderhavige overeenkomst. De tekst van die brieven luidt als volgt:

Nr. I

ROYAL NETHERLANDS EMBASSY

No. 1355

Tel Aviv, 16 April 1991

Your Excellency,

Referring to the Agreement between the Government of the Kingdom of the Netherlands and the Government of the State of Israel regarding the stationing in Israel of a Netherlands patriot missile system with logistic facilities and related Netherlands personnel, contained in the Exchange of Notes of 22 February and 3 March 1991, and following discussions between representatives of the Governments of the Kingdom of the Netherlands and the State of Israel concerning the early return of Netherlands personnel, I have the honour to notify, on behalf of the Government of the Kingdom of the Netherlands, the denunciation of the above-mentioned Agreement as of this date.

As repatriation of the patriot missile system, the logistic facilities and related Netherlands personnel has (almost) been completed, it is proposed that the Agreement will terminate on the date of your receipt of this notification.

Your written acknowledgement of receipt of this notification will confirm the date of termination of the above-mentioned Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

(sd.) J. N. J. B. HORAK

Dr. J. N. J. B. Horak
Ambassador of the Netherlands

*To: His Excellency
Mr David Levy
Deputy Prime Minister and
Minister of Foreign Affairs
of the State of Israel
Jerusalem*

Nr. II

DEPUTY PRIME MINISTER
AND MINISTER OF FOREIGN AFFAIRS

Jerusalem, 13 May 1991

Your Excellency,

I have the honour to refer to your Excellency's letter no. 1355 dated 16 April 1991, concerning the termination of the agreement between the Government of the Kingdom of the Netherlands and the Government of the State of Israel regarding the stationing in Israel of a Netherlands Patriot Missile System.

I acknowledge the termination of the above agreement and wish to take this opportunity to express our nation's gratitude for the important support given by your country in time of need, furthering the strong and valued friendship between both nations.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Your sincerely,

(sd.) D. LEVY

David Levy

*His Excellency
Dr. J. N. J. B. Horak
Ambassador of the Netherlands
The Royal Netherlands Embassy
in Israel*

Uitgegeven de *elfde* juni 1991.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK