

45 (2004) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2005 Nr. 40

A. TITEL

Notawisseling houdende een verdrag tussen de regering van het Koninkrijk der Nederlanden en de regering van Zijne Majesteit de Sultan en Yang Dipertuan van Brunei Darussalam betreffende de status van Nederlands militair personeel ten behoeve van training; Singapore, 21 december 2004

B. TEKST

Nr. I

Ambassade van het Koninkrijk der Nederlanden

Singapore, 8 November 2004

SIN/041108/BRU/PZ-JH

The Royal Netherlands Embassy presents its compliments to the Ministry of Foreign Affairs of Brunei Darussalam and has the honour to refer to the Ministry's note dated 8 June 2004 in which permission has been granted for Netherlands military personnel to join the British Jungle Training Programme in the Sultanate of Brunei Darussalam. The Netherlands requires that for training of its military personnel abroad a status of forces agreement has to be concluded with the receiving State. Therefore the Netherlands Embassy proposes an agreement between the Government of the Kingdom of the Netherlands and the Government of His Majesty the Sultan and Yang Dipertuan of Brunei Darussalam (hereinafter referred to as "the Contracting Parties") regarding the status of military personnel of the Ministry of Defence of the Kingdom of the Netherlands who will be present in the territory of the Sultanate of Brunei Darussalam for the purpose of participating in the British Jungle Training Programme in November and December 2004 on the following terms:

Article 1

Definitions

For the purpose of this Agreement and its implementation the term “Military personnel” means: the military personnel of the Ministry of Defence of the sending State.

Article II

Entry and exit requirements

1. The Military personnel shall have the right to enter into, stay and depart from the territory of the receiving State. The Military personnel shall have the same freedom of movement as is accorded to nationals of the receiving State.

2. The authorities of the receiving State shall allow the Military personnel unimpeded entry into and exit from the territory of the receiving State in accordance with the national laws and regulations of the receiving State.

Article III

Discipline and jurisdiction

1. Subject to the provisions of this Article,

a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

b) the authorities of the receiving State shall have jurisdiction over the military personnel with respect to offences committed within the territory of the receiving State and punishable by the law of that State.

2.

a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over the military personnel with respect to offences, including offences relating to the security of that State, punishable by its law but not by the law of the sending State.

c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence against a State shall include:

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State;

3. In case where the right to exercise jurisdiction is concurrent the following rules shall apply:

a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of the military personnel or of a civilian component in relation to:

(i) offences solely against the property or security of that State, or offences solely against the person or property of another member of the military personnel or civilian component of that State.

(ii) offences arising out of any act or omission done in the performance of official duty.

b) In the case of any other offence the authorities of the receiving State shall have the primary right to exercise jurisdiction.

c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other state considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are military personnel.

5.

a) The authorities of the receiving and sending States shall assist each other in the arrest of military personnel in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any members of the military personnel.

c) The custody of an accused member of the military personnel over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6.

a) The authorities of the receiving and sending States shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

b) The authorities of the Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7.

a) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

b) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the same territory by the authorities of the other Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of the receiving State.

9. Whenever a member of the military personnel is prosecuted under the jurisdiction of a receiving State he shall be entitled:

- a) to a prompt and speedy trial;
- b) to be informed, in advance of trial, of the specific charge or charges made against him;
- c) to be confronted with the witnesses against him;
- d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the receiving State;
- e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;
- f) if he considers it necessary, to have the services of a competent interpreter; and
- g) to communicate with a representative of the Government of the sending State and when the rules of the court permit, to have such a representative present at his trial

Article IV

Importation and exportation

1. The receiving State waives the right to levy import and export fees, duties, taxes and other charges otherwise leviable in the receiving State on equipment, materials, supplies and other property imported into the receiving State by the sending State in connection with this Agreement.

2. Equipment, materials, supplies and other property imported into the receiving State by the sending State in connection with this Agreement shall be exempt from inspection.

3. Baggage, personal effects, products and other property for the personal use of the Military personnel imported into the receiving State shall be exempt from import and export fees, duties, taxes and other charges otherwise leviable in the receiving State.

Article V

Uniforms

The Military personnel may wear their national military uniform, while performing official duties.

Article VI

Claims

1. The Contracting Parties waive any claims (other than contractual claims) against each other for damage to or loss of government property and for injury (including injury resulting in death) suffered by their personnel arising out of official duties.

2. Paragraph 1 of this Article is not applicable if damage to or loss of government property or injury suffered by the personnel mentioned in that paragraph has been the result of gross negligence or willful misconduct.

3. Third party claims for any loss, damage or injury caused by the Military personnel shall be settled by the receiving State on behalf of the sending State in accordance with the laws and regulations of the receiving State. Costs related to the settlement of any such claim shall be reimbursed by the sending State.

4. Third party claims for any loss, damage or injury caused by personnel of both Contracting Parties in the performance of their official duties shall be settled by the receiving State, also on behalf of the sending State, in accordance with the laws and regulations of the receiving State. Costs related to the settlement of any such claim shall be distributed between the Contracting Parties on an equal basis.

Article VII

Land, accommodation and facilities

The Military personnel may use the land, accommodation and facilities for the purposes of training made available to the armed forces of

the United Kingdom subject to whatever restrictions, terms and conditions as are applicable to the armed forces of the United Kingdom.

Article VIII

Settlement of disputes

Any disagreements that may arise from the application or implementation of this Agreement shall be settled through consultation between the appropriate authorities of the Contracting Parties, including, as necessary, through diplomatic channels.

Article IX

Termination

The Contracting Parties may terminate this Agreement at any time by giving two months written notice to the other Contracting Party.

Article X

Duration

This Agreement shall remain in force for the duration of the presence of the Military personnel in the territory of the receiving State during the British Jungle Training Programme and with regard to Article VI (CLAIMS) for the duration necessary to resolve the outstanding claims, but in any case, for no longer than one year.

If the foregoing is acceptable to the of Government of His Majesty the Sultan and Yang Dipertuan of Brunei Darussalam, the Royal Netherlands Embassy has the honour to propose that this Note and the Note in reply of the Ministry shall constitute an Agreement between the Government of the Kingdom of the Netherlands and the Government of His Majesty the Sultan and Yang Dipertuan of Brunei Darussalam, which shall enter into force on the date of receipt of the reply of the Ministry. If this date is later than 7 November 2004, this Agreement will have retroactive effect as from the latter date.

The Royal Netherlands Embassy avails itself of this opportunity to renew to the Ministry of Foreign Affairs of Brunei Darussalam the assurances of its highest consideration.

*High Commission of Brunei Darussalam
325 Tanglin Road
Singapore 247955*

Nr. II

Ministry of Foreign Affairs of Brunei Darussalam

Bandar Seri Begawan, 21 December 2004

MFA / POL II /45 / 04

The Ministry of Foreign Affairs of Brunei Darussalam presents its compliments to the Royal Netherlands Embassy and has the honour to refer to the Embassy's note of SIN/041108 / BRU/PZ-JH dated 8 November 2004, regarding an agreement between the Government of His Majesty the Sultan and Yang Dipertuan of Brunei Darussalam and the Kingdom of the Netherlands on the status of military personnel of the Ministry of Defence of the Kingdom of the Netherlands to participate in the British Jungle Training Programme in November and December 2004 in Brunei Darussalam.

The Ministry wishes to inform the Embassy that Brunei Darussalam has accepted and agreed with the amended Agreement.

The Ministry requests the Embassy's kind assistance to convey the matter to the relevant authority in the Netherlands.

The Ministry avails itself of this opportunity to renew to the Royal Netherlands Embassy the assurances of its highest consideration.

*Royal Netherlands Embassy
541, Orchard Road,
#13-01 Liat Towers,
Singapore 238881*

D. PARLEMENT

Het in de nota's vervatte verdrag behoeft 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 de nota's vervatte verdrag zijn ingevolge het in de op één na laatste alinea van nota Nr. I gestelde op 28 december 2004 in werking getreden, met dien verstande dat het in nota's vervatte verdrag ingevolge het in diezelfde alinea gestelde terugwerkende kracht heeft tot 7 november 2004 en ingevolge artikel X van nota Nr. I niet langer dan een jaar van kracht zal blijven.

Wat het Koninkrijk der Nederlanden betreft, geldt het in de nota's vervatte verdrag alleen voor Nederland.

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

Uitgegeven de *elfde* februari 2005.

De Minister van Buitenlandse Zaken,

B. R. BOT