

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2014 Nr. 142

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Australië inzake de aanwezigheid van Australisch overheidspersoneel in Nederland ten behoeve van de reactie op het neerhalen van vlucht MH17 van Malaysia Airlines;
's-Gravenhage, 1 augustus 2014*

B. TEKST

Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines Flight MH17

The Kingdom of the Netherlands and Australia (the Parties)

Noting the *Agreement between the Kingdom of the Netherlands and Ukraine on the International Mission for Protection of Investigation*, signed on 28 July 2014 (the IMPI Agreement);

Noting the International Mission for Protection of Investigation (IMPI) is tasked to facilitate the recovery of remains and the conduct of the investigation called for in United Nations Security Council Resolution 2166 of 21 July 2014;

Noting the *Arrangement between Ukraine and Australia on the deployment of Australian Personnel to Ukraine following the downing of Malaysian Airlines Flight MH17*, signed on 24 July 2014 (the Ukraine-Australia Arrangement);

Noting that Australia is a contributing State to the IMPI and that its contribution will be called the International Investigation Police Mission;

Noting the *Memorandum of Understanding between the Australian Federal Police and the National Police of the Netherlands on Combating Transnational Crime and Developing Police Cooperation*, which came into effect on 2 June 2014;

Have agreed as follows:

1.

Australia can send, on a temporary basis, Australian Government officials, including Australian Federal Police (AFP), Australian Defence Force (ADF) and other civilian officials, and associated equipment and assets (Australian Personnel) to the Netherlands for the purpose of responding to the downing of Malaysia Airlines Flight MH17, including for the purpose of providing support to the IMPI, identifying the remains recovered from Malaysia Flight MH17 and assisting with activities and investigations relating to the downing of Malaysia Flight MH17 in so far as this may be or have been mutually determined by the Parties (the Activity).

2.

Australian Personnel shall respect the sovereignty, territorial integrity and political independence of the Netherlands in accordance with the Charter of the United Nations.

3.

Australian Personnel shall respect the laws of the Netherlands, and refrain from any action or activity incompatible with the purposes of this Agreement.

4.

Each Party shall retain full national command and control over their respective personnel. Neither Party shall take any administrative or disciplinary action against the other Party's personnel. Should it become necessary to take administrative or disciplinary action against a Party's personnel during the Activity, the relevant national authorities shall take action in accordance with their national laws, regulations and policies.

5.

Australian Personnel shall be accorded the status equivalent to that accorded to the administrative and technical staff of a diplomatic mission of a state that is a party to the *Vienna Convention on Diplomatic*

Relations of 18 April 1961. The Netherlands may request the withdrawal of Australian Personnel from the Netherlands.

6.

a. The Parties shall waive all claims against each other that may arise from the Activity except where such claims arise out of wilful misconduct, recklessness or gross negligence.

b. With respect to third party claims arising out of the acts or omissions of Australian and/or Dutch personnel done in the course of the Activity that are not the responsibility of a third party:

- (i) Where the Parties mutually determine that responsibility for damage, loss, injury or death can be attributed to one Party, the cost of handling and settling the claim shall be the sole responsibility of that Party;
- (ii) Where it is mutually determined that both Parties are responsible for the damage, loss, injury or death, the Parties shall enter into consultation to resolve the handling and settling of the claim, with each Party paying an apportioned share based on their degree of responsibility for the damage, loss, injury or death;
- (iii) Where it is mutually determined that it is not possible to attribute responsibility for damage, loss, injury or death, the cost of handling and settling the claim shall be apportioned equally between the Parties; and
- (iv) In the event that one Party receives notice of such claims, the receiving Party shall inform the other Party as soon as practicable. The Parties shall assist each other in the procurement of evidence related to such claims.

7.

Australian Personnel shall enjoy entry into, exit from, and movement within, the Netherlands without delay or hindrance for the purposes of the Activity. Entry, exit and movement of Australian Personnel shall be on the basis of passports, without the requirement of visas. The Australian Senior Representative shall inform the appropriate authorities of the Kingdom of the Netherlands as soon as it becomes apparent that a member of the Australian personnel needs to remain in the Netherlands for a period exceeding three (3) months. The appropriate authorities of the Kingdom of the Netherlands will provide the relevant legal documents for the purposes of the Activity to the member of the Australian personnel promptly and with the minimum of administrative formalities.

8.

a. Australian Personnel and their national authorities shall be permitted to import, export, possess, store, move and use equipment, supplies and other items, including aircraft, vehicles, vessels, weapons, ammunition, other force protection equipment, explosives, communications equipment, provisions, medical and pharmaceutical equipment and supplies, blood and blood plasma, working dogs, and other supplies required for the Activity, together with personal effects and items for Australian Personnel's own consumption or use, free of all licences, duties, taxes and charges.

b. Without limiting the generality of the above:

- (i) Australian Personnel shall be entitled to acquire additional equipment and other supplies, and in consultation with the Netherlands, dispose of any equipment and other supplies as are no longer required by Australian Personnel free from duty or other restriction. Disposal of any equipment or supplies shall be carried out in accordance with the applicable requirements under Dutch law, including environmental regulations;
- (ii) Australian Personnel, who are professional, technical or trade staff (including health practitioners) or persons holding a relevant Australian or ADF licence, shall not be subject to registration or licensing requirements under the laws of the Netherlands. Australian Personnel who are health practitioners shall be entitled to perform certification tasks with respect to deceased persons;
- (iii) Aircraft, vehicles and vessels owned or operated by Australia for the purpose of the Activity, shall not be subject to fees, charges or duties. Australia shall pay reasonable charges for services requested for the Activity and which are supplied by the Netherlands or pursuant to a contract;
- (iv) Aircraft, vehicles and vessels owned or operated by Australia shall enjoy freedom of movement into, out of and within the Netherlands and shall be granted diplomatic clearance as expeditiously as possible for the purpose of the Activity. Flight planning shall occur in consultation with the appropriate airspace control authorities; and
- (v) Aircraft, vehicles and vessels owned or operated by Australia shall be given priority access to the greatest extent practicable, to transit to, within and from any area of the Netherlands and given access to the territorial waters and national airspace of the Netherlands to fulfil the purposes of the Activity.

9.

Australia shall appoint a Senior Representative (the Australian Senior Representative (Netherlands)) who shall be notified to the Netherlands.

The Australian Senior Representative (Netherlands), or such other Australian Personnel authorised by the Australian Senior Representative (Netherlands), shall be the point of contact between all relevant Netherlands authorities and Australian Personnel in the Netherlands pursuant to the Activity.

10.

Australian Personnel shall be entitled to wear, while engaged in the course of the Activity, their national police or military uniform.

11.

Logistic support for the Activity will be managed in accordance with the provisions contained in the *Arrangement between the Australian Department of Defence and the Minister of Defence of the Kingdom of the Netherlands concerning the Provisions of Mutual Logistic Support* which came into effect on 26 July 2006 (the MLSA) or any successor agreement or arrangement.

12.

The Australian Personnel shall be entitled to possess, carry, move, train with or check weapons, ammunition and explosives for the purposes of the Activity as prescribed by the Australian Senior Representative (Netherlands), or other Australian official nominated by Australia and notified to the Netherlands.

13.

The Parties shall cooperate to ensure the security of Australian Personnel and associated assets while in the Netherlands. Guard duties and similar duties related to the security of Australian Personnel and associated assets shall be the responsibility of the Netherlands and shall be carried out in accordance with the laws and regulations of the Netherlands.

14.

The Australian Senior Representative (Netherlands) shall have the right to take and retain immediate charge, and repatriate the body, of any Australian Personnel or other Australian official who dies in the course of the Activity.

15.

Australian Personnel:

a) shall, as mutually determined with the Netherlands and in accordance with paragraph 11 above, be granted the use of such bases, training centres, police premises and other facilities for the purpose of the Activity;

b) shall be entitled, at the direction of the Australian Senior Representative (Netherlands) or other Australian official nominated by Australia and notified to the Netherlands and in consultation with the relevant Netherlands authorities, to establish such temporary facilities in the Netherlands as may be necessary for the Activity;

c) shall enjoy the right of unrestricted communication by radio, telephone or any other means between Australian Personnel and other civilian and military elements; and

d) shall, in consultation with relevant Netherlands authorities, be able to establish the necessary facilities for maintaining such communications (including mobile radio and satellite sending and receiving stations). The frequencies and/or bandwidth used on all transmitting and receiving equipment shall be determined in consultation with Netherlands authorities.

16.

In respect of any accident or incident purely involving Australian aircraft, vehicles or vessels, or involving Australian aircraft, vehicles or vessels and the aircraft, vehicles or vessels of a third country, Australia shall, in consultation with the relevant Netherlands authorities, conduct the investigation. Where incidents involve Australian aircraft, vehicles or vessels and Netherlands aircraft, vehicles or vessels, the Parties shall conduct joint investigations. In respect of all incidents involving Australian aircraft, vehicles or vessels, Australian Personnel shall assist the Netherlands authorities to secure the incident site and take custody of all wreckage and remains from Australian aircraft, vehicles or vessels.

17.

The Parties may share information in accordance with applicable bilateral agreements or arrangements, including those for the protection of classified information. Information shall be used only for the purposes for which it is provided and shall not be transferred to any third party, without the written consent of the originating Party.

18.

Neither Party shall release any information relating to the other Party's personnel or the victims of MH17, including personal details,

names, injuries or deaths sustained, or any other information that may be sensitive, to any person or entity, without the prior written permission of the other Party to which the information relates.

19.

This treaty shall enter into force on the day that it has been signed by both Parties.

20.

The Parties may agree, in writing, to amend this treaty and the Parties shall agree on the terms for entry into force of the amendment.

21.

Any issue regarding the interpretation or application of this treaty shall be resolved amicably and expeditiously through consultation between the Parties and shall not be referred to any third party, national or international court or tribunal for settlement.

22.

With the exception of the responsibilities regarding disputes, immunities, claims and information, this treaty shall terminate on the completion of the Activity, or as otherwise mutually determined by the Parties, but no later than one year from entry into force.

DONE at The Hague on the 1st day of August, two thousand and fourteen.

D. PARLEMENT

Het 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 Verdrag zijn ingevolge artikel 19 op 1 augustus 2014 in werking getreden.

Wat betreft het Koninkrijk der Nederlanden, geldt het Verdrag alleen voor Nederland (het Europese deel).

J. VERWIJZINGEN

Titel : Verdrag van Wenen inzake diplomatiek verkeer;
Wenen, 18 april 1961
Tekst : *Trb.* 1962, 101 (Engels en Frans)
Trb. 1962, 159 (vertaling)
Laatste *Trb.* : *Trb.* 1994, 212

Titel : Verdrag tussen het Koninkrijk der Nederlanden en Oekraïne inzake de internationale missie tot bescherming van onderzoek;
Kiev, 28 juli 2014
Tekst : *Trb.* 2014, 135 (Engels)
Laatste *Trb.* : *Trb.* 2014, 141

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 (het Europese deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *eerste* augustus 2014.

De Minister van Buitenlandse Zaken,

F.C.G.M. TIMMERMANS