

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2018 Nr. 125

A. TITEL

*Verdrag tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Verenigde Staten van Amerika inzake de totstandkoming van een raamwerk voor samenwerking op het gebied van defensieaangelegenheden (met bijlage);
Washington, 2 juli 2018*

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 013120 in de Verdragenbank.

B. TEKST

**Agreement between the Government of the Kingdom of the Netherlands and the Government of the United States of America establishing a Framework for Defense Cooperation Activities
(Short title: US-NL Chapeau Defense Agreement)**

PREAMBLE

The Government of the Kingdom of the Netherlands
and

the Government of the United States of America
(hereinafter referred to as the Parties);

Desiring, in the exercise of their national and mutual defense responsibilities for the security of the United States of America and the Kingdom of the Netherlands, to facilitate the process of cooperation in defense matters;

Referring to the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on June 19, 1951 (NATO SOFA), which, *inter alia*, defines the terms "force" and "civilian component" and establishes procedures for resolution of certain claims arising from damage to property and death or injury to persons caused in connection with the operation of the North Atlantic Treaty;

Referring to the Agreement Between the Government of the United States of America and the Government of the Netherlands concerning stationing of the American forces in the Netherlands, with annex, concluded by an exchange of notes at The Hague on August 13, 1954 (Stationing Agreement);

Referring to the Mutual Defense Assistance Agreement Between the United States of America and the Netherlands, signed at Washington on January 27, 1950;

Referring to the Mutual Support Agreement Between the United States of America and the Kingdom of the Netherlands, signed at Stuttgart on February 22, 1983 or its successor Agreement;

Referring to the Agreement Between the United States of America and the Kingdom of the Netherlands on the Status of United States Personnel in the Caribbean Part of the Kingdom, signed at Washington on October 19, 2012 (Caribbean SOFA);

Referring to the NATO Agreement on the Communication of Technical Information for Defense Purposes, signed at Brussels on October 19, 1970, which provides, *inter alia*, that recipient States that receive in confidence proprietary technical information for defense purposes are responsible for safeguarding it, and that the owners of proprietary technical information that has been communicated for defense purposes who are damaged through the unauthorized disclosure or use of the information by a recipient State or by someone to whom this recipient has disclosed the information must be compensated by the recipient State;

Referring to the Agreement Between the United States of America and the Kingdom of the Netherlands Relating to the Safeguarding of Classified Information, concluded by exchange of notes at Washington, D.C., on August 18, 1960, as amended;

Referring to the Security Implementing Arrangement for Operations Between the Department of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands, with Appendices, signed at The Hague and Washington January 31, 2006, and March 13, 2006;

Have agreed as follows:

Article I

Purpose

This Agreement provides a framework to facilitate defense cooperation activities. Such defense cooperation activities may include, but are not limited to the following:

- Research, development, testing, and evaluation;
- Production and follow-on support;
- Exchange of information;
- Exchange of personnel;
- Military exercises and operations;
- Maintenance, in-service and logistic support, supplies, and services;
- Education; and
- Lease or loan of equipment and material.

Article II

Arrangements for defense cooperation activities

Whenever the Parties' national defense organizations, within the limits of defense responsibilities and authorities as established by the respective Party, enter into memoranda of understanding (MoUs) or other written arrangements for defense cooperation activities, such MoUs or other written arrangements shall only be subject to this Agreement if this Agreement is explicitly invoked by such MoUs or other written arrangements.

Article III

Criminal jurisdiction, liability, and claims

1. Regarding issues of civil liability of either Party or the members of the force or civilian component and criminal jurisdiction over members of the force or civilian component, the NATO SOFA, the Stationing Agreement, or the Caribbean SOFA, as applicable, shall apply pursuant to their terms.
2. Regarding issues of civil liability that are not governed by either the NATO SOFA, the Stationing Agreement, or the Caribbean SOFA, the following shall apply except in the case of the lease or loan of equipment and material covered by Article V (Lease or Loan of Equipment or Material) of this Agreement:
 - 2.1. Each Party waives all claims against the other for injury to or death of its personnel and for damage to its property arising from the performance of official duties.
 - 2.2. In the event of claims from third parties for injury to or death of persons or damage to or loss of property arising from the performance of official duties, the Parties shall share the costs of such claims in accordance with the proportions stated in the MoUs or other written arrangements subject to this Agreement.
 - 2.3. However, if the Parties jointly determine that injury, death, damage, or loss within the scope of paragraphs 2.1. or 2.2. of this Article results from reckless acts or reckless omissions, willful misconduct, or gross negligence of a Party's military or civilian personnel, the costs of any liability shall be borne by that Party in accordance with its national rules, regulations, and policies.
 - 2.4. Claims arising under any contract implementing the MoUs or other written arrangements subject to this Agreement shall be resolved in accordance with the provisions of the contract and shall be settled between the national defense organizations in accordance with those MoUs or other written arrangements subject to this Agreement.

Article IV

Protection of information, equipment, and material

The following provisions shall apply with respect to rights to own and use information, equipment, or material, as applicable, provided or developed under the MoUs or other written arrangements subject to this Agreement:

1. Information that is generated outside of the MoUs or other written arrangements subject to this Agreement and that is subsequently provided by the national defense organization of one Party to the national defense organization of the other Party in the performance of those MoUs or other written arrangements subject to this Agreement, shall be used by or for the other Party's national defense organization only as set out in those MoUs or other written arrangements.
2. Information that is generated by or for a Party's national defense organization in the performance of the MoUs or other written arrangements subject to this Agreement shall be used by or for the other Party's national defense organization only as set out in those MoUs or other written arrangements.
3. Information jointly generated by or for the Parties' national defense organizations shall be used by or for each Party's national defense organization only as set out in the MoUs or other written arrangements subject to this Agreement.
4. Title to information generated by or for the Parties' national defense organizations shall be allocated, as necessary, solely to the Party or jointly to the Parties and their contractors as set out in the MoUs or other written arrangements subject to this Agreement.
5. Neither Party shall sell, transfer title to, disclose, or transfer possession of the following information, or equipment, or material to any third party without the prior written consent of the other Party:
 - 5.1. information generated outside of the MoUs or other written arrangements subject to this Agreement and provided to one Party by the other Party;
 - 5.2. information generated in the performance of the MoUs or other written arrangements subject to this Agreement; or
 - 5.3. equipment or material provided by or for the other Party, jointly acquired, or that may be specified in the MoUs or other written arrangements subject to this Agreement.

Article V

Lease or loan of equipment and material

Regarding the lease or loan of equipment and material, the receiving Party shall use such equipment or material as set out in the MoUs or other written arrangements subject to this Agreement. The receiving Party shall be responsible for maintaining such equipment or material in good order, repair, and operable condition. Unless the providing Party has authorized the equipment or material to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the equipment or material to the providing Party in as good condition as received, normal wear and tear excepted, or return the equipment or material and pay the cost to restore it to its condition at the time of receipt, normal wear and tear excepted. If the material or equipment is damaged beyond economical repair, the receiving Party shall return the equipment or material to the providing Party (unless otherwise specified in the MoUs or other written arrangements subject to this Agreement) and pay the replacement value unless otherwise specified in the MoUs or other written arrangements subject to this Agreement, which shall be computed pursuant to the providing Party's laws and regulations. If the equipment or material is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value unless otherwise specified in the MoUs or other written arrangements subject to this Agreement, which shall be computed pursuant to the providing Party's laws and regulations.

Article VI

Logistics support

1. In the event the Mutual Support Agreement or its successor Agreement does not apply, the provisions for logistic support of this Article may be invoked.
2. Regarding logistics support, each Party shall utilize its best efforts, consistent with national priorities of the supplying country, not only in peacetime but also in periods of emergency or active hostilities, to satisfy written requests of the other Party for food, water, billeting, transportation (including airlift), petroleum, oil, lubricants, clothing, communication services, medical services, ammunition, storage services, training services, contracting and related services, repair and maintenance services, spare parts and components, access to and use of facilities, base operations support (including construction incident thereto), and airfield and port services, and shall make any payment or accounting therefor. Details regarding such logistics support shall be set out in the MoUs or other written arrangements subject to this Agreement.

Article VII

Access and use of facilities

The Government of the Kingdom of the Netherlands may provide to the Government of the United States of America, and representatives or agents of the United States Government as mutually determined, unimpeded access and use of facilities and areas in the Kingdom of the Netherlands, as mutually determined in MoUs or other written arrangements subject to this Agreement.

Article VIII

Personnel exchanges

The provisions of the Annex to this Agreement shall apply to the assignment, placement, exchange, or liaison of units and personnel between the Parties' national defense organizations pursuant to the MoUs or other written arrangements subject to this Agreement.

Article IX

Financial

The Parties shall meet all financial obligations as specified in the MoUs or other written arrangements subject to this Agreement. The obligations of the Parties shall be subject to the availability of funds for the purposes of this Agreement and those specified in the MoUs or other written arrangements subject to this Agreement, in accordance with the respective national laws and regulations of the Parties to this Agreement.

Article X

Disputes

Any dispute regarding the interpretation, application, or implementation of this Agreement or any MoU or other written arrangement subject to this Agreement shall be resolved only by consultation between the Parties and shall not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

Article XI

Termination

This Agreement shall remain in force until terminated by the Parties or by either Party by giving six months' notice through diplomatic channels of its intention to terminate it. However, the obligations of the Parties under this Agreement regarding liability and claims; protection of information, equipment, or material; lease or loan of equipment or materiel; payment for logistics support; and funding and disputes shall continue notwithstanding termination of this Agreement.

In the event of termination of this Agreement, the Parties' national defense organizations shall consult regarding termination or continuation of any MoU or other written arrangement that is subject to this Agreement.

Article XII

Applicability of the agreement as regards the Kingdom of the Netherlands

As regards the Kingdom of the Netherlands, this Agreement shall apply to the European part of the Netherlands. However, it may be extended to the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius, and Saba), Aruba, Curaçao, and Sint Maarten by amending the Agreement through an exchange of diplomatic notes.

Article XIII

Entry into force

This Agreement, including its Annex, which forms an integral part hereof, shall enter into force on the first day of the second month after the date of receipt of the later note exchanged between the Parties, through diplomatic channels, indicating that their respective internal procedures necessary for entry into force of this Agreement have been completed.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, this 2nd day of July, 2018, in duplicate in the English language.

For the Government of the Kingdom of the Netherlands,

HENDRIK JAN JURRIAN SCHUWER

For the Government of the United States of America,

PETER HOEKSTRA

ANNEX

MoUs or other written arrangements between the Parties' national defense organizations for defense cooperation activities that involve the Assignment of personnel shall be governed by the following terms in addition to those set forth in Articles I through XIII of this Agreement, when this Agreement is explicitly invoked by such MoUs or other written arrangements subject to this Agreement:

1. The following terms shall have the indicated meanings when used in this Annex:

1.1. "Assignment" shall mean the assignment, placement, exchange, or liaison of National Defense Units and Personnel of one Party to exchange, liaison, cooperative project, or other positions within the national defense organization of the other Party. The words "assigned" and "assigns" shall have a meaning corresponding with the meaning of the word "Assignment."

1.2. "Classified Information" shall mean Information provided by one Party to the other Party that is designated, and, for all such forms other than oral, marked as classified by the releasing Party for national security purposes and therefore requires protection against unauthorized disclosure. Classified Information may be in oral, visual, electronic, or documentary form, or in the form of material, including equipment or technology.

1.3. "Controlled Unclassified Information" shall mean unclassified Information to which access or distribution limitations have been applied in accordance with applicable national laws, regulations, and policies of the Parties and that it is designated, and, for all such forms other than oral, marked as such by the releasing Party or Parties as applicable. It includes Information that is exempt from public disclosure or that is subject to export controls.

1.4. "Host Government" shall mean the national government of the Host Defense Organization, as well as all political subdivisions thereof.

1.5. "Host Defense Organization" shall mean the national defense organization to which a National Defense Unit or Personnel of the Parent Defense Organization is assigned pursuant to the MoUs or other written arrangements subject to this Agreement.

1.6. "Information" shall mean knowledge that can be communicated by any means, regardless of form or type, including, but not limited to, that of a scientific, technical, business, or financial nature, and also including photographs, reports, manuals, threat data, experimental data, test data, computer software, designs, specifications, processes, techniques, inventions, drawings, technical writings, sound recordings, pictorial representations, and other graphical presentations, whether in magnetic tape, computer memory, or any other form and whether or not subject to intellectual property rights.

1.7. "National Defense Units and Personnel" shall mean units and personnel within the definitions of "force" and "civilian component" in Article I of the NATO SOFA, or within the definition of "United States personnel" in Article I of the Caribbean SOFA, or in the Stationing Agreement, and does not include employees and agents of contractors.

1.8. "Parent Government" shall mean the national government of the Parent Defense Organization, as well as all political subdivisions thereof.

1.9. "Parent Defense Organization" shall mean the national defense organization of the Parent Government that assigns a National Defense Unit or Personnel to the Host Defense Organization, pursuant to the MoUs or other written arrangements subject to this Agreement.

1.10. "Security Assurances" shall mean a written confirmation, requested by and exchanged between governments, that contains the following elements: verification of the personnel security clearance level of the Parent Government's citizens or nationals; a statement by a responsible official of the Parent Government confirming its citizens or nationals are approved to access the Classified and Controlled Unclassified Information relevant to the Assignment on behalf of the Parent Government; and an obligation that the government shall ensure compliance with any security agreements or other security requirements specified by either government.

2. The Parent Defense Organization shall provide the Host Defense Organization with the appropriate Security Assurances for National Defense Units and Personnel prior to the commencement of the Assignment. Security Assurances shall be filed through official channels and in accordance with the established visit procedures of the Host Defense Organization. Access to Classified Information and Controlled Unclassified Information shall not occur until such security assurances have been received by the Host Defense Organization.

3. Assigned National Defense Units and Personnel shall comply with the security and disclosure laws, regulations, and policies of both Parties concerning Classified Information and Controlled Unclassified Information and all applicable international agreements and arrangements between the Parties.
4. All Classified Information exchanged or disclosed to assigned National Defense Units and Personnel pursuant to the MoUs or other written arrangements subject to this Agreement shall be subject to and protected in accordance with the Agreement Between the United States of America and the Kingdom of the Netherlands Relating to the Safeguarding of Classified Information, concluded by exchange of notes at Washington, D.C., on August 18, 1960, as amended, and the Security Implementing Arrangement for Operations Between the Department of Defense of the United States of America and the Minister of Defence of the Kingdom of the Netherlands, with Appendices, signed at The Hague and Washington January 31, 2006, and March 13, 2006, to the extent applicable.
5. Access to Controlled Unclassified Information by assigned National Defense Units and Personnel shall be authorized by the Host Defense Organization and shall be granted only as necessary to fulfill the purpose for the Assignment.
 - 5.1. Controlled Unclassified Information provided by or produced in cooperation with the Parent Defense Organization shall be made available by the assigned National Defense Units and Personnel to the Host Defense Organization only on the condition that it shall not be released to a third party (as may be defined in the MoUs or other written arrangements subject to this Agreement) by the Host Defense Organization without the prior written approval of the appropriate authorities of the Parent Government.
 - 5.2. Disclosure of Controlled Unclassified Information by the Host Defense Organization to assigned National Defense Units and Personnel shall not be deemed a license or an authorization to use such Information for any purpose other than for the purpose of the Assignment.
6. Assigned National Defense Units and Personnel and their dependents shall be accorded exemptions, privileges, and immunities to the extent authorized by the applicable laws and regulations of the Host Government, any applicable status of forces agreement between the Parties, or other applicable international agreement or arrangement between the Parties. Criminal and disciplinary jurisdiction shall be exercised in accordance with any such agreements between the Parties, including but not limited to the NATO SOFA, the Caribbean SOFA, and the Stationing Agreement. Nothing in this agreement derogates from the exemptions, privileges, and immunities accorded by Host Government law or international agreement or arrangement.
7. Assigned National Defense Units and Personnel shall observe relevant Host Government laws and shall abstain from any activity inconsistent with the provisions of any MoUs or other written arrangements subject to this Agreement, and from all political activity in the territory of the Host Government.
8. Neither the Host Defense Organization nor the armed forces of the Host Government may take disciplinary action against assigned National Defense Units and Personnel of the other Party under the military laws or regulations of the Host Government, nor shall the Host Defense Organization or the armed forces of the Host Government exercise disciplinary powers over the dependents of such assigned National Defense Units and Personnel of the other Party. The Parent Defense Organization shall take such administrative or disciplinary action against its assigned National Defense Units and Personnel as may be appropriate in the circumstances and the Parties shall cooperate in the investigation of any offenses under the laws or regulations of either Party.
9. If any assigned National Defense Units and Personnel are unable to perform their duties because of inappropriate behavior, willful violations of obligations or procedures, disciplinary action, illness, unsuitability, or other reason, the Host Defense Organization may request termination of their Assignment. At the request of the Host Defense Organization, the Parent Defense Organization shall remove the assigned National Defense Units and Personnel from the territory of the Host Government. In the event of the termination of an Assignment, the Parent Defense Organization may fill the terminated Assignment with another individual who meets the requirements of the Assignment, subject to any certification, approval, or training requirements of the Host Defense Organization.
10. Assigned National Defense Units and Personnel of either Party may possess and carry arms while on duty on the condition that they are authorized to do so by their orders and with the approval of the appropriate authorities of the Host Government. Assigned National Defense Units and Personnel shall not carry or transport privately owned weapons into the territory of the Host Government, unless authorized to do so by the appropriate authorities of the Host Government, in accordance with the applicable laws of the Host Government.
11. Medical and dental services shall be subject to the provisions of any applicable international agreements or arrangements between the Parties, and in the absence of such an agreement or arrangement, all costs associated with medical and dental services of the assigned National Defense Units and Personnel shall be the responsibility of the Parent Government or Parent Defense Organization.
12. Unless the Parent Defense Organization gives written approval, assigned National Defense Units and Personnel shall not be placed in positions of political sensitivity where their presence might jeopardize the interests of their Parent Defense Organization or Parent Government. Additionally, unless the Parent Defense Organization gives written approval, assigned National Defense Units and Personnel shall not:
 - 12.1. be placed in duty Assignments or in situations in which direct hostilities with forces of third states are likely to occur or have commenced;
 - 12.2. participate in any form of operation, including peacekeeping or combat operations;

- 12.3. travel to a third country, as part of the duties being performed;
 - 12.4. participate in any law enforcement operations; or
 - 12.5. participate in any civil-military actions.
13. Upon arrival, assigned National Defense Units and Personnel shall be provided briefings by the Host Defense Organization on the laws, regulations, and policies pertaining to Classified Information and Controlled Unclassified Information. Additionally, assigned National Defense Units, Personnel, and their dependents shall be provided Information on exemptions and privileges, medical and dental services, and other matters as appropriate.
 14. The Host Defense Organization shall provide, upon request and subject to availability, such office facilities, communication services, access to and use of facilities, base operations support, and other administrative or logistic support addressed in applicable MoUs or other written arrangements subject to this Agreement. All costs associated with the provision of administrative, logistic, or training support provided pursuant to these MoUs or other written arrangements subject to this Agreement shall be subject to reimbursement by the Parent Defense Organization to the Host Defense Organization, as required by the laws, regulations, or policies of the Host Government, and as set out in the applicable MoUs or other written arrangements subject to this Agreement.
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D. PARLEMENT

Het Verdrag, met bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met bijlage, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met bijlage, zullen ingevolge artikel XIII van het Verdrag in werking treden op de eerste dag van de tweede maand die volgt op de datum van ontvangst van de laatste tussen de partijen via diplomatieke kanalen uitgewisselde nota, inhoudende de kennisgeving dat aan hun respectieve interne procedures voor de inwerkingtreding van het Verdrag is voldaan.

Uitgegeven de *vierentwintigste* juli 2018.

De Minister van Buitenlandse Zaken,

S.A. BLOK