

No. 8543

**UNITED NATIONS DEVELOPMENT PROGRAMME
(SPECIAL FUND)
and
AUSTRALIA**

Agreement concerning assistance from the Special Fund sector of the United Nations Development Programme for the Territory of Papua and the Trust Territory of New Guinea (with exchange of letters). Signed at New York, on 6 February 1967

Official text: English.

Registered ex officio on 6 February 1967.

**PROGRAMME DES NATIONS UNIES
POUR LE DÉVELOPPEMENT (FONDS SPÉCIAL)
et
AUSTRALIE**

Accord relatif à une assistance de l'élément Fonds spécial du Programme des Nations Unies pour le développement au Territoire du Papua et au Territoire sous tutelle de la Nouvelle-Guinée (avec échange de lettres). Signé à New York, le 6 février 1967

Texte officiel anglais.

Enregistré d'office le 6 février 1967.

No. 8543. AGREEMENT¹ BETWEEN THE UNITED NATIONS DEVELOPMENT PROGRAMME (SPECIAL FUND) AND THE GOVERNMENT OF AUSTRALIA CONCERNING ASSISTANCE FROM THE SPECIAL FUND SECTOR OF THE UNITED NATIONS DEVELOPMENT PROGRAMME FOR THE TERRITORY OF PAPUA AND THE TRUST TERRITORY OF NEW GUINEA. SIGNED AT NEW YORK, ON 6 FEBRUARY 1967

WHEREAS the Government of Australia (hereinafter referred to as "the Government") has requested assistance for the Territory of Papua and the Trust Territory of New Guinea (together hereinafter referred to as "the Territories") from the Special Fund sector of the United Nations Development Programme in accordance with resolution 1240 (XIII)² of the General Assembly of the United Nations ;

WHEREAS the United Nations Development Programme (hereinafter referred to as the UNDP) is prepared to provide the Government with such assistance for the purpose of promoting social progress and better standards of life and advancing the economic, social and technical development of the Territories ,

NOW THEREFORE the Government of Australia and the UNDP have entered into this Agreement in a spirit of friendly co-operation.

Article I

ASSISTANCE TO BE PROVIDED BY THE UNDP

1. This Agreement embodies the conditions under which the UNDP shall provide the Government with assistance from its Special Fund sector for the Territories and also lays down the basic conditions under which projects receiving such assistance will be executed.
2. A Plan of Operation for each project shall be agreed to in writing by the Government, the UNDP and the Executing Agency. The terms of this Agreement shall apply to each Plan of Operation.

¹ Came into force on 6 February 1967, upon signature, in accordance with article X (1).

² United Nations, *Official Records of the General Assembly, Thirteenth Session, Supplement No. 18 (A/4090)*, p. 11

3. The UNDP undertakes to make available from its Special Fund sector such sums as may be specified in each Plan of Operation for the execution of the project described therein, in accordance with the relevant and applicable resolutions and decisions of the appropriate United Nations organs, in particular resolution 1240 (XIII) of the General Assembly, and subject to the availability of funds.
4. Compliance by the Government with any prior obligations specified in each Plan of Operation as necessary for the execution of a project shall be a condition of performance by the UNDP and by the Executing Agency of their responsibilities under this Agreement. In case execution of a project is commenced before compliance by the Government with any related prior obligations, such execution may be terminated or suspended at the discretion of the UNDP.

Article II

EXECUTION OF PROJECT

1. Each project shall be executed or administered on behalf of the UNDP by an Executing Agency, to which the sums referred to in Article I above shall be disbursed by agreement between the UNDP and such Executing Agency.
2. An Executing Agency, in carrying out a project, shall have the status, vis-à-vis the UNDP, of an independent contractor. Accordingly, the UNDP shall not be liable for the acts or omissions of the Executing Agency or of persons performing services on its behalf. The Executing Agency shall not be liable for the acts or omissions of the UNDP or of persons performing services on behalf of the UNDP.
3. Any agreement between the Government and an Executing Agency concerning the execution of a project shall be subject to the provisions of this Agreement and shall require the prior concurrence of the Administrator of the UNDP.
4. Any equipment, materials, supplies and other assets belonging to the UNDP or an Executing Agency which may be utilized or provided by either or both in the execution of a project shall remain the property of the UNDP or of the Executing Agency, as the case may be, unless and until such time as title thereto may be transferred to the Government on terms and conditions mutually agreed upon between the Government and the UNDP or the Executing Agency concerned.

Article III

INFORMATION CONCERNING PROJECT

1. The Government shall furnish the UNDP with such relevant accounts, records, and other information as the UNDP may request concerning the execution of any project or its continued feasibility and soundness, or concerning the compliance by the Government with any of its responsibilities under this Agreement.

2. The UNDP undertakes that the Government will be kept currently informed of the progress of operations on projects executed under this Agreement. The UNDP and the Government shall have the right, at any time, to observe the progress of any operations carried out under this Agreement.
3. The Government shall, subsequent to the completion of a project, make available to the UNDP at its request information as to benefits derived from and activities undertaken to further the purposes of that project, and will permit observation by the UNDP for this purpose.
4. The Government will also make available to the Executing Agency all information concerning a project necessary or appropriate to the execution of that project, and all information necessary or appropriate to an evaluation, after its completion, of the benefits derived from and activities undertaken to further the purpose of that project.
5. The UNDP and the Government shall consult each other regarding the publication as appropriate of any information relating to any project or to benefits derived therefrom.

Article IV

PARTICIPATION AND CONTRIBUTION OF GOVERNMENT IN EXECUTION OF PROJECT

1. The Government shall participate and co-operate in the execution of the projects covered by this Agreement. It shall, in particular, perform all the acts required of it in each Plan of Operation, including the provision of materials, equipment, supplies, labour and professional services available within Australia or the Territories.
2. If so provided in the Plan of Operation, the Government shall pay, or arrange to have paid, to the UNDP the sums required, to the extent specified in the Plan of Operation, for the provision of labour, materials, equipment and supplies available within Australia or the Territories.
3. Moneys paid to the UNDP in accordance with the preceding paragraph shall be paid to an account designated for this purpose by the Secretary-General of the United Nations and shall be administered in accordance with the financial regulations applicable to the Special Fund sector of the UNDP.
4. Any moneys remaining to the credit of the account designated in the preceding paragraph at the time of the completion of the project in accordance with the Plan of Operation shall be repaid to the Government after provision has been made for any unliquidated obligations in existence at the time of completion of the project.
5. The Government shall as appropriate display suitable signs at each project identifying such a project as one assisted by the UNDP and the Executing Agency.

*Article V*LOCAL FACILITIES TO BE PROVIDED BY THE GOVERNMENT TO THE UNDP
AND THE EXECUTING AGENCY

1. In addition to the payment referred to in Article IV, paragraph 2, above, the Government shall assist the UNDP and the Executing Agency in executing any project by paying or arranging for payment to be made for the following facilities in the Territories required to fulfil the programme of work specified in the Plan of Operation :

- (a) The local living costs of experts and other international personnel assigned by the UNDP or the Executing Agency to the Territories under this Agreement, to the extent specified in the Plan of Operation ;
- (b) Local administrative and clerical services, including the necessary local secretarial help, interpreter-translators, and related assistance ;
- (c) Transportation of personnel, supplies and equipment within the Territories ;
- (d) Postage and telecommunications for official purposes ,
- (e) Any sums which the Government is required to pay under a Plan of Operation referred to in Article VIII, paragraph 5 below.

2. Moneys paid under the provisions of this Article shall be paid to the UNDP and shall be administered in accordance with Article IV, paragraphs 3 and 4.

3. Any of the local services and facilities referred to in paragraph 1 of this Article in respect of which payment is not made by the Government to the UNDP shall be furnished in kind by the Government to the extent specified in the Plan of Operation.

4. The Government also undertakes to furnish in kind the following services and facilities in the Territories :

- (a) The necessary office space and other premises ;
- (b) Appropriate medical facilities and services for international personnel engaged in the project.

5. The Government undertakes to provide such assistance as it may be in a position to provide for the purpose of finding suitable housing accommodation in the Territories for international personnel assigned to projects under this Agreement.

Article VI

RELATION TO ASSISTANCE FROM OTHER SOURCES

In the event that assistance towards the execution of a project is obtained by either UNDP or the Government from other sources, the UNDP and the Government shall consult each other and the Executing Agency with a view to effective co-ordination and utilization of assistance received by the Government from all sources. The obligations of the Government hereunder shall not be modified by any arrangements with other entities co-operating with the Government in the execution of a project.

Article VII

USE OF ASSISTANCE

The Government shall exert its best efforts to make the most effective use of the assistance provided by the UNDP and the Executing Agency and shall use such assistance for the purpose for which it is intended. The Government shall take such steps to this end as are specified in the Plan of Operation.

Article VIII

FACILITIES, PRIVILEGES AND IMMUNITIES

1. The Government shall in the Territories apply to the United Nations and its organs, including the UNDP, its property, funds and assets, and to its officials, the provisions of the Convention on the Privileges and Immunities of the United Nations.¹

2. (a) The Government shall in the Territories apply to each Specialized Agency acting as an Executing Agency, its property, funds and assets and to its officials the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies² including any Annex to the Convention applicable to such Specialized Agency, and in this regard the positions of the Government and of the UNDP have been placed on record in letters exchanged on the day of signature of this Agreement.

(b) Until such time as the Government becomes a party to the Agreement on the Privileges and Immunities of the International Atomic Energy Agency,³ if it is proposed that the International Atomic Energy Agency should act as an Executing

¹ United Nations, *Treaty Series*, Vol 1, p 15, and Vol 90, p 327 (corrigendum to Vol. 1, p 18)

² United Nations, *Treaty Series*, Vol 33, p. 261 For the final and revised texts of annexes published subsequently, see Vol 71, p 318, Vol 79, p 326, Vol. 117, p 386, Vol 275, p. 298, Vol 314, p. 308, Vol 323, p 364, Vol 327, p 326; Vol 371, p. 266, Vol. 423, p 284, and Vol. 559, p. 345.

³ United Nations, *Treaty Series*, Vol 374, p 147

Agency, the Government shall give full and sympathetic consideration to any proposal advanced by the UNDP for granting suitable privileges and immunities in the Territories to the International Atomic Energy Agency, its property, funds and assets and to its officials and experts, either by amendment of this Agreement or by provisions in relevant Plans of Operations.

3. In appropriate cases where required by the nature of the project, the Government and the UNDP may agree that immunities similar to those specified in the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies shall be granted in the Territories by the Government to a firm or organization, and to the personnel of any firm or organization which may be retained by either the UNDP or an Executing Agency to execute or to assist in the execution of a project. Such immunities as may be agreed shall be specified in the Plan of Operation relating to the project concerned.

4. The Government shall take any measures which may be necessary to remove any obstacles which may interfere with operations under this Agreement, and shall in particular grant to the Special Fund sector of the UNDP and an Executing Agency and to the officials of either and to other persons performing services on behalf of either the following rights and facilities in or in relation to the Territories :

- (a) The prompt issuance without cost of necessary visas, licenses or permits ;
- (b) Access to the site of work and all necessary rights of way ;
- (c) Free movement, whether within or to or from the Territory concerned, to the extent necessary for proper execution of the project ;
- (d) The most favourable legal rate of exchange ;
- (e) Any permits necessary for the importation of equipment, materials and supplies in connection with this Agreement and for their subsequent exportation ; and
- (f) Any permits necessary for importation of property belonging to and intended for the personal use or consumption of officials of the UNDP or of any Executing Agency, or other persons performing services on their behalf, and for the subsequent exportation of such property

5. In cases where a Plan of Operation so provides, the Government shall either exempt from or bear the cost of any taxes, duties, fees or levies which may be imposed in the Territories on any firm or organization, which may be retained by an Executing Agency or by the UNDP, and on the personnel of any such firm or organization in respect of

- (a) The salaries or wages earned by such personnel in the Territories in the execution of the project ,
 - (b) Any property which is brought into the Territories in connection with the Plan of Operation or which, after having been brought into the Territories in connection with the Plan of Operation, is subsequently withdrawn therefrom ; and
 - (c) Any furniture and effects which are brought into the Territories by such personnel on first entry for their own personal use.
6. The Government shall be responsible for dealing with any claims resulting from operations in the Territories under this Agreement which may be brought by third parties against the UNDP or an Executing Agency, against the officials of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the UNDP, the Executing Agency concerned and the above-mentioned persons harmless in case of any liability resulting from such operations, except where it is agreed by the UNDP and the Government that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

Article IX

SETTLEMENT OF DISPUTES

Any dispute between the UNDP and the Government arising out of or relating to this Agreement which cannot be settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party to the dispute. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

Article X

1. This Agreement shall enter into force upon signature and shall continue in force until terminated under paragraph 3 below.
2. This Agreement may be modified by written agreement between the Parties hereto. Any relevant matter for which no provision is made in this Agreement shall

be settled by the Parties in keeping with the relevant resolutions and decisions of the appropriate organs of the United Nations. Each Party shall give full and sympathetic consideration to any proposal advanced by the other Party under this paragraph.

3. This Agreement may be terminated by either Party by written notice to the other and shall terminate sixty days after receipt of such notice.

4. The obligations assumed by either of the Parties under Articles III, IV and VII shall survive the expiration or termination of this Agreement. The obligations assumed by the Government under Article VIII hereof shall survive the expiration or termination of this Agreement to the extent necessary to permit orderly withdrawal of personnel, funds and property of the UNDP and of any Executing Agency, or of any firm or organization retained by either of them to assist in the execution of a project.

IN WITNESS WHEREOF the undersigned, duly appointed representatives of the UNDP and of the Government of Australia respectively, have signed the present Agreement at New York this sixth day of February 1967.

For the UNDP :

Paul G. HOFFMAN
Administrator
United Nations Development
Programme

For the Government
of Australia :

Patrick SHAW
Permanent Representative
of Australia

EXCHANGE OF LETTERS

I

AUSTRALIAN MISSION TO THE UNITED NATIONS

New York, 6 February, 1967

Sir,

I have the honour to refer to the Agreement signed today between the Government of Australia and the United Nations Development Programme for the provision of assistance from the Special Fund sector of the United Nations Development Programme for the Territory of Papua and the Trust Territory of New Guinea. In this connection, I should like to convey to you the following observations of the Government of Australia concerning this Agreement :

- (a) No activities involving the International Finance Corporation or involving accrual of income to the International Finance Corporation are envisaged under the Agreement.

- (b) The services of persons ordinarily resident in Australia or in the Territories who are not officials of the Specialized Agencies at the time of signature of the relevant Plan of Operation shall, if required on the project, be provided by the Government, unless otherwise agreed by the Parties. Persons who are to render advice and assistance in the Territories on behalf of the UNDP shall be selected by the UNDP or an Executing Agency in consultation with the Government.
- (c) It will not be possible for the Government to give full effect to Article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies, which requires each State party to the Convention to grant Specialized Agencies, in its territory, treatment not less favourable than that accorded by the Government of that State to any other Government in the matter of priorities, rates and taxes on telecommunications.
- (d) With regard to subparagraphs (e) and (f) of paragraph 4 of Article VIII of the Agreement, the Government understands that these subparagraphs will not oblige it to permit the importation into the Territories of articles whose importation is prohibited or restricted by laws and regulations which concern public security, health or morality or which are designed to prevent the introduction into Australia and its territories of plant or animal diseases. With regard to paragraph 2 of Article VIII, the Government understands that each Specialized Agency acting as an Executing Agency will, before importing into the Territories any goods the importation of which is ordinarily prohibited or restricted by the laws in force in the Territories, consult with the Government and give sympathetic consideration to representations made by the Government. These understandings do not affect such obligations as have been assumed by the Government of Australia with respect to the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies.
- (e) Article IX of the Agreement will apply to any case of lack of agreement between the UNDP and the Government under paragraph 6 of Article VIII.

If the foregoing observations are acceptable to the United Nations Development Programme, I have the honour to suggest that the present letter, together with your reply in that sense, shall be regarded as placing on record the positions of the Government of Australia and of the United Nations Development Programme on this matter.

Accept, Sir, the assurance of my highest consideration.

Patrick SHAW
Permanent Representative of Australia

Mr. Paul G. Hoffman
Administrator
United Nations Development Programme
New York

II

UNITED NATIONS DEVELOPMENT PROGRAMME
UNITED NATIONS
NEW YORK

6 February 1967

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows :

[See letter I]

The United Nations Development Programme takes note of the observations expressed by your Government as set out in the letter quoted above, and agrees that your letter, together with this reply, shall be regarded as placing on record the positions of the Government of Australia and of the United Nations Development Programme on this matter.

Accept, Sir, the assurance of my highest consideration.

Paul G. HOFFMAN
Administrator