

No. 18223

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**UNITED NATIONS  
and  
AUSTRALIA**

**Agreement concerning provision of RAAF Caribou Aircraft for use by the United Nations Military Observer Group in India and Pakistan (UNMOGIP). Signed at New York on 9 September 1977 and at Canberra on 21 December 1977**

*Authentic text: English.*

*Registered ex officio on 1 January 1980.*

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**ORGANISATION DES NATIONS UNIES  
et  
AUSTRALIE**

**Accord concernant la fourniture d'un avion Caribou de la RAAF devant être utilisé par le groupe d'observateurs militaires dans l'Inde et le Pakistan (UNMOGIP). Signé à New York le 9 septembre 1977 et à Canberra le 21 décembre 1977**

*Texte authentique : anglais.*

*Enregistré d'office le 1<sup>er</sup> janvier 1980.*

AGREEMENT<sup>1</sup> BETWEEN THE UNITED NATIONS AND THE GOVERNMENT OF AUSTRALIA CONCERNING PROVISION OF RAAF CARIBOU AIRCRAFT FOR USE BY THE UNITED NATIONS MILITARY OBSERVER GROUP IN INDIA AND PAKISTAN (UNMOGIP)

*Article I.* PURPOSE AND DURATION OF THE AGREEMENT

(a) The Government of Australia, hereinafter referred to as “the Government”, shall furnish to the United Nations, upon all the conditions hereinafter set forth, the following:

- (1) One RAAF Caribou Aircraft, hereinafter referred to as “the Aircraft”, equipped with all the mechanical, navigation, radio and technical equipment, instruments and engines required to ensure its satisfactory operation for the purposes authorized herein;
- (2) All material, supplies and parts required to ensure the satisfactory operation of the Aircraft for the purposes authorized herein;
- (3) The Aircrew, and ground personnel, hereinafter referred to as “the Aircrew”, required to ensure the satisfactory operation of the Aircraft for the purposes authorized herein.

(b) It is agreed that the Aircraft may be used by the United Nations Military Observer Group in India and Pakistan (hereinafter referred to as “UNMOGIP”) in the UNMOGIP area air space (hereinafter referred to as “the Area”) in such manner as the United Nations may see fit in support of such activities of the United Nations as may be in furtherance of the peaceful settlement of disputes and not involving the employment of armed forces contemplated by chapter VII of the United Nations Charter.

(c) The limits of the Area referred to in the preceding paragraph are to be generally interpreted as limited to the State[s] of Jammu and Kashmir on both sides of the Line of Control with entry points through Karachi, Rawalpindi and New Delhi.

*Article II.* SUBSTITUTION OF AIRCRAFT

(a) The Government shall have the right to substitute at any time an equivalent Aircraft for the Aircraft in service provided that the substitute Aircraft shall meet all the requirements laid down in article I, paragraph (a).

(b) Each such substitution shall be made at the Government’s expense and the United Nations shall pay no charges under article V, paragraph (a), for the positioning of the substitute Aircraft and for the depositioning of the substituted Aircraft.

(c) The replaced Aircraft and Aircrew shall cease to be covered by the provisions of this Agreement when, on being withdrawn from UNMOGIP service, the Aircraft leaves the Area.

(d) The substitute Aircraft and Aircrew shall be covered by the provisions of this Agreement from the time the Aircraft enters the Area for service with UNMOGIP until the Aircraft leaves the Area on being withdrawn from UNMOGIP service.

<sup>1</sup> Came into force on 21 December 1977 by signature, with retroactive effect from 1 April 1975, in accordance with article XIII (a).

*Article III. MAINTENANCE OF THE AIRCRAFT*

The Government shall maintain the Aircraft in an airworthy condition and shall be responsible for the performance of the required maintenance and repair operation.

*Article IV. COSTS OF THE MAINTENANCE AND OPERATION OF THE AIRCRAFT*

Except as provided in article V, the Government shall bear all the expenses arising out of repairs to and maintenance and operation of the Aircraft and in particular the cost of facilities and labour, materials and the salaries of the Aircrew.

*Article V. COMPENSATION TO BE PAID TO THE GOVERNMENT*

The United Nations shall pay to the Government as sole compensation for the performance of the Government's obligations under this Agreement:

- (a) To cover the positioning and depositioning of the Aircraft once per annum from the date the Aircraft enters the Area or upon termination of the Agreement as provided for in article XIII (b):
- (1) A charge of A\$126.00 (Australian dollars one hundred twenty-six), exclusive of fuel, the cost of which will be met by the United Nations, per flying hour for the ferrying of the Aircraft from Richmond RAAF Base, New South Wales, to UNMOGIP and to return the Aircraft at the end of twelve months to Richmond RAAF Base, New South Wales.
  - (2) Any landing and parking fees and fees for the use of communication facilities arising from ferrying the Aircraft from base to the Area.
  - (3) The actual cost of changing the insignia of the Aircraft on the basis of one painting and one repainting per year.
  - (4) The actual cost of any special modifications to the Aircraft requested by the United Nations.
- (b) To cover the use of the Aircraft during the period of this Agreement:
- (1) A charge of A\$126.00 (Australian dollars one hundred twenty-six), exclusive of fuel, the cost of which will be met by the United Nations, for every hour flown by the Aircraft at the request of the United Nations.
  - (2) Any landing and parking fees, fees for use of communication facilities and charges for loading and unloading the Aircraft which arise from the operation of the Aircraft in the Area for flights requested and paid for by the United Nations.

*Article VI. STATUS OF THE MEMBERS OF THE AIRCREW*

(a) Members of the Aircrew shall have the status of UNMOGIP Military Observers, and shall be recognized by the United Nations as experts on mission for the United Nations in terms of Article VI of the Convention on the Privileges and Immunities of the United Nations:<sup>1</sup>

- (1) From the time of their entry into the Area for service with UNMOGIP until the time of their departure from the Area on being withdrawn from UNMOGIP service;
- (2) On all flights requested and manifested by the United Nations and on maintenance and training flights within India and Pakistan.

(b) Members of the Aircrew shall be entitled to per diem and compensation for loss of property, death or injury payable to UNMOGIP Military Observers:

<sup>1</sup> United Nations, *Treaty Series*, vol. 1, p. 15, and vol. 90, p. 327 (corrigendum to vol. 1, p. 18).

- (1) From the time of their entry into the Area for service with UNMOGIP until the time of their departure from the Area on being withdrawn from UNMOGIP service;
- (2) On all flights requested and manifested by the United Nations and on maintenance and training flights within India and Pakistan.

(c) Other Australian personnel whose entry into the Area may be necessary for the performance of functions under this Agreement shall be recognized by the United Nations as experts on mission for the United Nations in terms of article VI of the Convention on the Privileges and Immunities of the United Nations, provided their entry and stay in the Area is at the explicit invitation, or with the agreement, of the United Nations.

*Article VII. OPERATIONAL CONTROL OF THE AIRCRAFT AND ACCOUNTING*

(a) The Aircraft shall throughout the term of this Agreement be under the command of the Aircraft Commander who shall co-operate to the fullest extent with the Chief Military Observer of UNMOGIP in the Area, hereinafter referred to as "the CMO".

(b) The CMO may designate the passengers and cargo to be taken and the destination of the Aircraft provided, however, that no such request shall have the effect of placing the airworthy condition of the Aircraft in danger, as determined by the Aircraft Commander.

(c) The Aircraft Commander shall collate all flying records of the Aircraft on a monthly basis, in accordance with appropriate Australian governmental regulations, policies and procedure for revenue special mission transactions. The Government shall submit to the United Nations Headquarters a statement of the hours flown per month, countersigned by an authorized representative of the UNMOGIP, in support of the statements of account covering any operations performed during the tenure of this Agreement. All such statements of account shall be rendered by the Government and all charges and costs incurred in pursuance of the terms of this Agreement shall be payable by the United Nations at intervals to be agreed upon between the parties hereto. Remittances shall be made payable to the Government, and mailed to:

Consulate-General of Australia  
636 Fifth Avenue  
New York, NY 10020  
"Attn: Sub-Treasury"

and a copy of the payment advice shall be forwarded to:

Permanent Mission of Australia to the United Nations  
885 Second Avenue  
New York, NY 10017

(d) Should circumstances so require, the United Nations, with the consent of the Aircraft Commander, may pay directly for the Aircraft POL or other supplies chargeable to the Government. The United Nations shall thereupon be entitled to deduct the amounts thus paid and duly certified by the Aircraft Commander from the next payment due to the Government for the use of the Aircraft.

*Article VIII. LIABILITY*

(a) Except in cases of damage caused by malfunction of the aircraft and by the gross negligence or wilful misconduct of members of the Aircrew, the United Nations hereby indemnifies and saves harmless the Government and the Aircrew in respect of all manner of actions, causes of actions, claims and damages whatsoever

which may arise out of flights requested and manifested by the United Nations, or out of training and maintenance flights within India and Pakistan, from the time the Aircraft enters the Area for service with UNMOGIP until the Aircraft's departure from the Area on being withdrawn from UNMOGIP service. This provision shall apply as well to a substitute Aircraft while it is within the Area (see article II) but shall not apply to supporting and maintenance flights (C-130 Hercules aircraft).

(b) The liability of the United Nations in respect of members of the Aircrew shall be governed by and limited to the provisions of this article and of article VI.

#### *Article IX. DAMAGE OR LOSS*

(a) From the time the Aircraft enters the Area for service with UNMOGIP until its departure from the Area on being withdrawn from UNMOGIP service, the United Nations shall, subject to the obligation of the Government to maintain the Aircraft in an airworthy condition, be liable for any loss or destruction or damage to the Aircraft from any cause whatsoever except for loss, destruction or damage caused by the malfunction of the Aircraft or the wilful misconduct or gross negligence of members of the Aircrew. This provision shall apply as well to a substitute Aircraft while it is within the Area, but shall not apply to supporting and maintenance flights (operated by C-130 Hercules aircraft).

(b) The United Nations shall compensate the Government for loss or damage caused by hostilities or *force majeure* to the Aircraft's service and maintenance equipment brought into the Area for the purpose of this Agreement. It is agreed that the Aircraft Commander shall keep the United Nations informed of what service and maintenance equipment shall be covered by this provision and the approximate value thereof.

#### *Article X. ADDRESSES*

(a) Unless otherwise indicated by notice in writing, any communication under this Agreement to be made to the Government shall be addressed to:

Permanent Mission of Australia to the United Nations  
885 Second Avenue  
New York, NY 10017

(b) Unless otherwise indicated by notice, in writing, any communication under this Agreement made to the United Nations shall be addressed to:

Director of Field Operations Service  
Office of General Services  
United Nations  
New York, NY 10017

#### *Article XI. NEGOTIATIONS WITH GOVERNMENT AUTHORITIES IN THE AREA OF UNMOGIP OPERATION*

The United Nations shall undertake all negotiations with the local Government Authorities in the area of UNMOGIP operations in order to secure the necessary approval for its use of the Aircraft in the Area and, if possible, to obtain the release of custom and excise duty taxes on POL supplies used by the Aircraft. The Government shall on the other hand certify to the competence of the Crew and the airworthiness of the Aircraft as required by the local Government Authorities.

*Article XII. DISPUTES*

Any dispute between the United Nations 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. 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 make the necessary appointment. 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 XIII. EFFECTIVE DATES*

(a) This Agreement shall enter into force immediately and shall be deemed to have been in force since One April 1975.

(b) This Agreement will remain in force until 30 June 1978 and shall continue thereafter unless terminated by either Party upon giving ninety days' notice in writing.

[Signed — Signé]<sup>1</sup>

Signature for the Government  
of Australia

*Date:* 21 December 1977

[Signed — Signé]<sup>2</sup>

Signature for the  
United Nations

*Date:* 9 September 1977

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<sup>1</sup> Signed by Andrew Peacock — Signé par Andrew Peacock.

<sup>2</sup> Signed by Clayton C. Timbrell — Signé par Clayton C. Timbrell.