

No. 22304

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**AUSTRALIA  
and  
ISRAEL**

**Exchange of letters constituting an agreement concerning the immunities of Australian military members of the Multinational Force and Observers while on leave in Israel (with attachment). Jerusalem, 28 September 1982, and Tel Aviv, 27 October 1982**

*Authentic text: English.*

*Registered by Australia on 11 August 1983.*

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**AUSTRALIE  
et  
ISRAËL**

**Échange de lettres constituant un accord relatif aux immunités accordées au personnel militaire australien de la Force et du Corps d'observateurs multinationaux en permission en Israël (avec document connexe). Jérusalem, 28 septembre 1982, et Tel-Aviv, 27 octobre 1982**

*Texte authentique : anglais.*

*Enregistré par l'Australie le 11 août 1983.*

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE STATE OF ISRAEL CONCERNING THE IMMUNITIES OF AUSTRALIAN MILITARY MEMBERS OF THE MULTINATIONAL FORCE AND OBSERVERS WHILE ON LEAVE IN ISRAEL

I

MINISTER OF FOREIGN AFFAIRS

28 September 1982

Excellency,

I have the honour to refer to the Protocol of 3rd August 1981,<sup>2</sup> related to the Treaty of Peace of 26th March 1979 between the Government of the State of Israel and the Government of the Arab Republic of Egypt,<sup>3</sup> and to the Agreement between the Government of Australia and the Director General of the MFO concerning the participation of an Australian contingent in the Multinational Force and Observers (MFO)<sup>4</sup> established by the said Protocol. I propose, in accordance with article 11(d) of the appendix to the Protocol, the following supplementary arrangement between the Government of the State of Israel and the Government of Australia respecting those Australian military members of the MFO (other than those assigned to any MFO office in Israel in accordance with arrangements to be made with the MFO who will be regarded as on duty during their assignment to such office) who enter Israel, as the receiving State within the meaning of paragraph 3 of the Appendix to the Protocol (hereinafter "Israel"), on leave or who are taking leave in Israel after having entered Israel on official duty and over whom your Government would otherwise exercise jurisdiction pursuant to paragraph 11(a) of that appendix (hereinafter called "vacationing Australian members of the MFO"). This arrangement is without prejudice to the right of Israel to request a waiver of immunity in individual cases pursuant to paragraph 11(c) of the appendix.

(a) The Government of Australia waives the immunity of vacationing Australian members of the MFO who are reasonably suspected of having committed while on leave in Israel offenses punishable by imprisonment of more than 3 years or death or of possessing, for personal use, dangerous drugs as defined in the Dangerous Drugs Ordinance (New Version) 5733-1973, as amended, to the extent necessary to permit the Israeli authorities to detain such suspected persons for the purpose of conducting investigations, in accordance with applicable legal procedures. As provided by applicable law, it is understood that the period for which the Israeli authorities may detain such suspected persons may not exceed 48 hours,

<sup>1</sup> Came into force on 27 October 1982, the date of the note in reply, in accordance with the provisions of the said letters.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1335, p. 327.

<sup>3</sup> *Ibid.*, vol. 1136, p. 100, and vol. 1138, p. 59.

<sup>4</sup> See p. 117 of this volume.

except when detention is authorized by an order of a competent court issued following a hearing at which the suspected person may be represented by a lawyer. The Israeli authorities may seek a court order permitting detention for more than seven days only in special circumstances and with the personal approval of the Attorney General of Israel. The Israeli authorities shall notify the Director General of the MFO and the designated representative of the Government of Australia of the Attorney General's intention to request such a court order at least twenty-four hours prior to his doing so. Any views which the Government of Australia may express shall be brought to the attention of the Attorney General, in order that he may take them into account.

After detention under this section and except as provided in section (b) below, the Israeli authorities shall transfer the custody of such suspected persons to the MFO authorities for investigation and trial in accordance with national law as provided in the Protocol. The Government of Australia shall inform the Israeli authorities as to the results of legal proceedings taken with respect to such suspected persons in accordance with paragraph 11 of the appendix to the Protocol following their transfer to custody of the MFO.

In accordance with Australian law, an alleged victim of a crime, his family and/or his representative may be present at any trial for that crime of a member of the MFO transferred to the MFO in accordance with this section.

A member of the MFO who is detained by the Israeli authorities in accordance with this section shall be afforded all procedural guarantees established by applicable law, including the following guarantees:

- (i) To consult a lawyer within a reasonable period of time;
- (ii) To have legal representation of his own choice for his defense in detention proceedings, or, if he indicates he lacks funds for his defense, to petition the court for free legal representation;
- (iii) To have a writ of *habeas corpus* sought on his behalf.

He shall also be entitled:

- (i) To have the services of a competent interpreter, if he considers it necessary;
- (ii) Not to be subject to the application of martial law;
- (iii) In accordance with consular practice, to communicate with representatives of the MFO and of the Government of Australia and to have such representatives present at detention proceedings;
- (iv) In accordance with applicable prison regulations, to have the right to be visited by representatives of the MFO and of the Government of Australia and by members of his immediate family, and to receive during such visits material and medical assistance.

(b) The Government of Australia waives the immunity of vacationing Australian members of the MFO whom the Government of the State of Israel intends to bring to trial for weapons offenses committed while on leave in Israel, in violation of article 144 of the Penal Law, 5737-1977, or for drug felonies committed while on leave in Israel in violation of articles 7 and 13-20 of the Dangerous Drugs Ordinance (New Version) 5733-1973, as amended, (attached hereto), including procurement, conspiracy and attempts to commit such offenses, it being understood that none of the offenses described in this section are punishable by death.

The Israeli authorities shall notify the Director General of the MFO and the designated representative of the Government of Australia of the Attorney General's

intention to bring such MFO members to trial at least twenty-four hours prior to presenting charges against such member. Any views which the Government of Australia may express shall be brought to the attention of the Attorney General, in order that he may take them into account.

(c) For purposes of this arrangement, a member of the MFO present in Israel shall be considered on leave unless that member's name has been forwarded in advance to the Israeli authorities as being in Israel on official duty, in accordance with the regular mutually accepted procedures prevailing in this regard. The Director General of the MFO shall determine any question arising as to whether a member of the MFO whose name has been forwarded in accordance with those procedures was on official duty at the time the alleged offense was committed.

(d) In accordance with protocol and consular practice, the Israeli authorities shall notify immediately the Director General of the MFO and the designated representative of the Government of Australia of the detention of a vacationing Australian member of the MFO, and of any further action taken.

(e) A member of the MFO who is to be brought to trial in accordance with the foregoing provisions shall be afforded all procedural guarantees established by applicable law, including the following guarantees:

- (i) To a prompt and speedy trial;
- (ii) To be informed, in advance of trial, of the specific charge or charges made against him;
- (iii) To be confronted with the witnesses against him;
- (iv) To have compulsory process for obtaining evidence and witnesses in his favour, if they are within the jurisdiction of the State of Israel;
- (v) To have legal representation of his own choice for his defense, or, if he indicates he lacks funds for his defense, to petition the court for free legal representation.

He shall also be entitled:

- (i) To have the services of a competent interpreter, if he considers it necessary;
- (ii) In accordance with consular practice, to communicate with representatives of the MFO and of the Government of Australia and to have such representatives present at his trial;
- (iii) Not to be subject to the application of martial law or trial by military courts or special tribunals;
- (iv) In accordance with applicable prison regulations, to have the right to be visited by representatives of the MFO and of the Government of Australia and by members of his immediate family, and to receive during such visits material and medical assistance.

(f) At the request of either Government, the Government of the State of Israel and the Government of Australia shall review this arrangement.

I have the honour to propose, if the foregoing is acceptable to you, that this letter and your reply thereto shall together constitute an agreement between our two Governments which shall enter into force on the date of your reply.

Accept, Excellency, the assurances of my highest consideration.

[Signed]

YITZHAK SHAMIR  
Minister of Foreign Affairs

H. E. David Goss  
Ambassador of Australia in Israel

STATE OF ISRAEL

*DANGEROUS DRUGS ORDINANCE*  
(NEW VERSION), 5733-1973

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|---------------------------------------|--|
| Possession and use                    | 7. (a) A person shall not be in possession of, or use, a dangerous drug, save in so far as permitted by this ordinance or by regulations made thereunder, or under a license from the Director.<br>(b) The provision of this section relating to the prohibition of possession shall not apply to a dangerous drug in lawful transit under this ordinance.   |
| (Amendment 5739-1979)                 | (c) A person who contravenes to the provisions of this section is liable to imprisonment to a term of 15 years or a fine of half a million pounds. But if he possessed drugs or uses them solely for his own needs, he is liable to imprisonment for a term of 3 years or a fine of 50 thousand pounds.  |
| <i>Article Two. TRADE AND TRANSIT</i> |  |
| Export, import trade and supply       | 13. A person shall not export, import or facilitate the export or import of, or trade in, or effect any other transaction in respect of, or supply a dangerous drug in any manner whatsoever, whether with or without consideration, save in so far as permitted by this ordinance or by regulations made thereunder or under a license from the Director.   |
| Acting as go-between                  | 14. A person shall not act as a go-between, whether with or without consideration, in respect of an act prohibited under section 13.   |
| Conveying in transit                  | 15. A person shall not convey any dangerous drug through Israel in transit save from a country from which it may be lawfully exported to a country into which it may be lawfully imported. If the drug comes from a country party to the Convention, it shall, moreover, be accompanied by a valid export permit or diversion permit.  |
| Diversion                             | 16. (a) No person shall, except under a diversion permit, cause any dangerous drug brought into Israel in transit to be diverted to any destination other than that to which it was originally consigned.<br>(b) Where a drug in transit is accompanied by an export permit or diversion permit from a competent authority of a foreign country, the country of destination indicated in the permit shall be regarded as the country from which the drug was originally consigned. |
| Moving drug in transit                | 17. (a) A person shall not remove any dangerous drug from the conveyance by which it is brought into Israel in transit, or move any dangerous drug in Israel after removal as aforesaid, save under a removal license from the Director of the Department of Customs and Excise.   |

- Tampering with drug in transit 18. A person shall not subject any dangerous drug in transit to any process which would alter its nature, nor wilfully open or break a package containing any such drug, save upon the instructions of the Director and in such manner as he may direct.
- Restriction on application 19. The provisions of sections 15 to 18 shall not apply:  
 (1) To a dangerous drug in transit by the post;  
 (2) To a dangerous drug in transit by air if the aircraft passes over Israel without landing;  
 (3) To such a quantity of a dangerous drug as may, *bona fide*, reasonably form a part of the medical stores of any vessel or aircraft.
- Penalties (Amendment 5739-1979) 19. A. A person who contravenes to the provisions of this article is liable to imprisonment for a term of 15 years or a fine of half a million pounds.
- Control of dangerous drugs in transit 20. Subject to the restriction imposed by section 19, the Director of the Department of Customs and Excise or an officer authorized by him may require the production of the export permit or diversion permit relating to a consignment of dangerous drugs carried in transit through Israel and to take such further action in respect of the consignment as may be prescribed by regulations.

## II

27 October 1982

Excellency,

I have the honour to refer to your letter of 28 September 1982, which reads as follows:

[See letter I]

I have the honour to confirm that the foregoing is acceptable to the Government of Australia and that your letter and this reply shall together constitute an agreement between our two Governments which shall enter into force on the date of this reply.

Accept, Excellency, the assurances of my highest consideration.

[Signed]

DAVID GOSS  
 Ambassador of Australia  
 in Israel

H.E. Yitzhak Shamir  
 Minister of Foreign Affairs  
 Jerusalem