

AGREEMENT**between the European Union and New Zealand on the participation of New Zealand in the European Union military crisis management operation in Bosnia and Herzegovina (Operation Althea)**

THE EUROPEAN UNION (EU),

of the one part, and

THE GOVERNMENT OF NEW ZEALAND (NEW ZEALAND),

of the other part,

hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- the adoption by the Council of the European Union of Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina ⁽¹⁾,
- the invitation to New Zealand to participate in the EU-led operation,
- the successful completion of the Force Generation process and the recommendation by the EU Operation Commander and the EU Military Committee to agree on the participation of New Zealand forces in the EU-led operation,
- Political and Security Committee Decision BiH/1/2004 of 21 September 2004 ⁽²⁾ on the acceptance of New Zealand's contribution to the EU military operation in Bosnia and Herzegovina,
- Political and Security Committee Decision BiH/3/2004 of 29 September 2004 on the setting up of the Committee of Contributors for the EU military operation in Bosnia and Herzegovina ⁽³⁾,

HAVE AGREED AS FOLLOWS:

Article 1

Participation in the operation

1. New Zealand shall associate itself with Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina and with any Joint Action or Decision by which the Council of the European Union decides to extend the EU military crisis management operation, in accordance with the provisions of this Agreement and any required implementing arrangements.

2. The contribution of New Zealand to the EU military crisis management operation is without prejudice to the decision-making autonomy of the European Union.

3. New Zealand shall ensure that its forces and personnel participating in the EU military crisis management operation undertake their mission in conformity with:

- Joint Action 2004/570/CFSP and possible subsequent amendments,
- the Operation Plan,
- implementing measures.

4. Forces and personnel seconded to the operation by New Zealand shall carry out their duties and conduct themselves solely with the interest of the EU military crisis management operation in mind.

5. New Zealand shall inform the EU Operation Commander in due time of any change to its participation in the operation.

⁽¹⁾ OJ L 252, 28.7.2004, p. 10.

⁽²⁾ OJ L 324, 27.10.2004, p. 20.

⁽³⁾ OJ L 325, 28.10.2004, p. 64. Decision as amended by Decision BiH/5/2004 (OJ L 357, 2.12.2004, p. 39).

*Article 2***Status of forces**

1. The status of the forces and personnel contributed to the EU military crisis management operation by New Zealand shall be governed in accordance with the provisions contained in paragraph 12 of United Nations Security Council Resolution 1575 (2004) of 22 November 2004.

2. The status of the forces and personnel contributed to headquarters or command elements located outside Bosnia and Herzegovina, shall be governed by arrangements between the headquarters and command elements concerned and New Zealand.

3. Without prejudice to the provisions on the status of forces referred to in paragraph 1 of this Article, New Zealand shall exercise jurisdiction over its forces and personnel participating in the EU military crisis management operation.

4. New Zealand shall be responsible for responding to any claims from, linked to, or concerning the participation of any of its forces or personnel in the EU military crisis management operation. New Zealand shall be responsible for bringing any action, in particular legal or disciplinary, against any of its forces and personnel, in accordance with its laws and regulations.

5. New Zealand undertakes to make a declaration as regards the waiver of claims against any State participating in the EU military crisis management operation, and to do so when signing this Agreement.

6. The European Union undertakes to ensure that Member States make a declaration as regards the waiver of claims, for the participation of New Zealand in the EU military crisis management operation, and to do so when signing this Agreement.

*Article 3***Classified information**

1. New Zealand shall take appropriate measures to ensure that EU classified information is protected in accordance with the European Union Council's security regulations, contained in Council Decision 2001/264/EC of 19 March 2001⁽¹⁾, and in accordance with further guidance issued by competent authorities, including the EU Operation Commander.

⁽¹⁾ OJ L 101, 11.4.2001, p. 1. Decision as amended by Decision 2004/194/EC (OJ L 63, 28.2.2004, p. 48).

2. Where the EU and New Zealand have concluded an agreement on security procedures for the exchange of classified information, the provisions of such an agreement shall apply in the context of the EU military crisis management operation.

*Article 4***Chain of command**

1. All forces and personnel participating in the EU military crisis management operation shall remain under the full command of their national authorities.

2. National authorities shall transfer the operational and tactical command and/or control of their forces and personnel to the EU Operation Commander. The EU Operation Commander is entitled to delegate his authority.

3. New Zealand shall have the same rights and obligations in terms of the day-to-day management of the operation as participating European Union Member States.

4. The EU Operation Commander may, following consultations with New Zealand, at any time request the withdrawal of New Zealand's contribution.

5. A Senior Military Representative (SMR) shall be appointed by New Zealand to represent its national contingent in the EU military crisis management operation. The SMR shall consult with the EU Force Commander on all matters affecting the operation and shall be responsible for day-to-day contingent discipline.

*Article 5***Financial aspects**

1. New Zealand shall assume all the costs associated with its participation in the operation unless the costs are subject to common funding as provided for in the legal instruments referred to in Article 1(1) of this Agreement, as well as in Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of EU operations having military or defence implications⁽²⁾.

2. In the case of death, injury, loss or damage to natural or legal persons from the State(s) in which the operation is conducted, New Zealand shall, when its liability has been established, pay compensation under the conditions foreseen in the provisions on status of forces, as referred to in Article 2(1) of this Agreement.

⁽²⁾ OJ L 63, 28.2.2004, p. 68.

*Article 6***Arrangements to implement the Agreement**

Any necessary technical and administrative arrangements in pursuance of the implementation of this Agreement shall be concluded between the Secretary-General of the Council of the European Union/High Representative for the Common Foreign and Security Policy and the appropriate authorities of New Zealand.

*Article 7***Non-compliance**

Should one of the Parties fail to comply with its obligations laid down in the previous Articles, the other Party shall have the right to terminate this Agreement by serving a notice of one month.

*Article 8***Dispute settlement**

Disputes concerning the interpretation or application of this Agreement shall be settled by diplomatic means between the Parties.

*Article 9***Entry into force**

1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for this purpose.
2. This Agreement shall be provisionally applied from the date of signature.
3. This Agreement shall remain in force for the duration of New Zealand's contribution to the operation.

Done at Brussels, 04-05-2005, in the English language in four copies.

For the European Union

For New Zealand



DECLARATIONS
referred to in Article 2(5) and (6) of the Agreement

Declaration by the EU Member States:

'The EU Member States applying EU Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina will endeavour, insofar as their internal legal systems so permit, to waive on a reciprocal basis, as far as possible, claims against New Zealand for injury, death of their personnel, or damage to, or loss of, any assets owned by themselves and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel from New Zealand in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
- arose from the use of any assets owned by New Zealand, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel from New Zealand using those assets.'

Declaration by New Zealand:

'New Zealand applying EU Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina will endeavour, insofar as its internal legal system so permits, to waive on a reciprocal basis, as far as possible, claims against any other State participating in the EU crisis management operation for injury, death of its personnel, or damage to, or loss of, any assets owned by itself and used by the EU crisis management operation if such injury, death, damage or loss:

- was caused by personnel in the execution of their duties in connection with the EU crisis management operation, except in case of gross negligence or wilful misconduct, or
 - arose from the use of any assets owned by States participating in the EU crisis management operation, provided that the assets were used in connection with the operation and except in case of gross negligence or wilful misconduct of EU crisis management operation personnel using those assets.'
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