



Treaty Series No. 24 (1989)

Agreement

concerning an

International Trust Fund for Tuvalu

Suva, 16 June 1987

[The United Kingdom Instrument of Ratification was deposited on 11 August 1987 and with the exception of Article 5 the Agreement came into force for the United Kingdom on that date. Article 5 came into force for the United Kingdom and the other original parties on 11 March 1988. The dates on which the rest of the Agreement came into force for the other original parties are given in a footnote to Article 29.]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1989*

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**AGREEMENT
CONCERNING AN INTERNATIONAL TRUST FUND FOR TUVALU**

The Parties to this Agreement,

Conscious that Tuvalu, which achieved independence on 1 October 1978, is one of the world's smallest independent developing countries in terms of both land area and population; has few financial reserves and minimal revenue generating capacity;

Further conscious that in order to progress towards self-sufficiency Tuvalu needs assistance to overcome special difficulties of remoteness and lack of natural resources;

Respecting the independence of Tuvalu in the management of its economy;

Wishing, for the purpose of contributing to the long-term financial viability of Tuvalu, to establish a trust fund to provide the Government of Tuvalu with a reliable source of revenue;

Have agreed as follows:

PART I: ESTABLISHMENT

ARTICLE 1

Establishment of Tuvalu Trust Fund

1. There shall be established by this Agreement an international organisation to be known as the Tuvalu Trust Fund (in this Agreement called "the Fund"), which shall be governed by the provisions of this Agreement.
2. The Parties to this Agreement shall be the members of the Fund.

ARTICLE 2

Purpose of the Fund

The purpose of the Fund is to contribute to the long-term financial viability of Tuvalu by providing an additional source of revenue for recurrent expenses of the Government of Tuvalu in order to:

- (a) assist the Government to achieve greater financial autonomy in the management of its recurrent budget;
- (b) enable the Government to maintain and if possible improve existing levels of social infrastructure and services;
- (c) enhance the capacity of the Government to receive and effectively utilise external capital development and technical assistance;
- (d) enable the Government to meet long-term maintenance and operating costs of social and economic infrastructure and services; and
- (e) assist the Government to develop the economy of Tuvalu.

ARTICLE 3

Powers of the Fund

The Fund shall have all powers necessary for the fulfilment and achievement of its purpose.

ARTICLE 4

Limitation of Liability

No Party or contributor to the Fund shall be liable, by reason of its being a Party to this Agreement or of its contribution, as the case may be, for acts or obligations of the Fund.

ARTICLE 5

Legal Status, Privileges and Immunities

1. To enable the Fund to carry out its purpose, each Party shall accord to the Fund, in its territory, the legal status, privileges and immunities set out in this Article.
2. The Fund shall possess juridical personality and, in particular, capacity to:
 - (a) contract;
 - (b) acquire and dispose of immovable and movable property; and
 - (c) institute legal proceedings.
3. The Fund shall be exempt from any exchange control regulations, restrictions or moratoria.
4. Within the scope of its official activities, the Fund, its property and assets shall be exempt from all direct taxation.

PART II: BOARD

ARTICLE 6

Board

1. There shall be a Board of Directors of the Fund.
2. The Directors shall be:
 - (a) a Director appointed by the Government of Tuvalu, who shall be Chairman of the Board;
 - (b) one Director appointed by each other original Party; and
 - (c) one Director appointed by each other Party which contributes to the Fund more than an amount fixed by the Board from time to time by a majority which shall include the votes of all the Directors appointed by the original Parties.
3. An alternate Director may be appointed by the Party appointing the Director under paragraph 2 of this Article and may participate in any meeting of the Board when the substantive Director is for any reason temporarily unable to attend.
4. All the powers of the Fund shall be vested in and exercisable by the Board.
5. The functions of the Board shall include:
 - (a) the operation, supervision and management of the Fund;
 - (b) the investment and distribution of resources of the Fund, and
 - (c) authorisation of the conclusion of agreements and arrangements with governments and other international organisations.
6. Directors shall serve as such without payment of remuneration or expenses by the Fund.
7. The Board shall meet as necessary and reasonable notice shall be given of meetings.
8. For the purposes of meetings of the Board, two-thirds of Directors, or alternates of absent Directors, shall constitute a quorum.
9. Except where otherwise provided in this Agreement, questions before the Board shall be decided by a majority of votes of Directors, and alternates of absent Directors, present and voting at the meeting. The Chairman shall have a deliberative vote and, in the event of an equality of votes where a simple majority is required, shall also have a casting vote.
10. The Board shall establish its own Rules of Procedure.

PART III: ADVISORY COMMITTEE

ARTICLE 7

Advisory Committee

1. There shall be an Advisory Committee with the functions of:
 - (a) advising the Government of Tuvalu on the progress of the economy of Tuvalu and the effect of the Fund socially and economically on Tuvalu; and
 - (b) submitting an interim report after the first six months and thereafter an annual report on all these matters to the Government of Tuvalu and to the Board.
2. The Advisory Committee, in the performance of its functions, shall consider and advise on Tuvalu's National Budgets and estimates, annual accounts and finances having regard amongst other things to the size of the Fund's capital and the returns available from it.
3. The Advisory Committee shall consist of two members, or such other number as may be decided by the Parties. The members of the Advisory Committee shall be appointed by agreement of all the Parties.
4. Members of the Advisory Committee shall be paid such remuneration and expenses as the Board may approve.
5. Members of the Advisory Committee shall visit Tuvalu on a regular basis.

PART IV: RESOURCES OF THE FUND

ARTICLE 8

Resources

1. The resources of the Fund shall consist of:
 - (a) initial contributions under Article 9;
 - (b) additional contributions under Article 10; and
 - (c) returns derived from the operations of or sums otherwise accruing to the Fund.
2. The resources of the Fund shall be held in trust and administered by the Board and used only for the purpose of, and in accordance with, this Agreement.

ARTICLE 9

Initial Contributions by Parties

1. Each original Party agrees to contribute to the Fund the amount specified in the Annex.
2. Any other Party which accedes to this Agreement in accordance with paragraph 6 of Article 29 shall make an initial contribution to the Fund in accordance with arrangements agreed by the Board with the agreement of all Directors.

ARTICLE 10

Additional Contributions from Parties and other Contributions

1. The Fund may accept additional contributions from Parties and contributions from other contributors, in accordance with Article 11, in the form of grants or, with the agreement of all Directors, in the form of:
 - (a) interest free loans; or
 - (b) interest free suspensory term loans.
2. The Fund may refuse a contribution if it considers that it would not be in the interests of the Fund or would not be in the interests of Tuvalu to accept it.
3. The Fund shall not issue negotiable or transferable obligations evidencing indebtedness for loans received under paragraph 1 of this Article.

ARTICLE 11

Conditions Governing Contributions

1. Contributions shall be made for the purpose of the Fund without further restriction as to use and, except for the repayment of loans made under paragraph 1 of Article 10, shall not be refunded to contributors except in accordance with Article 25 or with paragraph 5 of Article 29.
2. A contribution to the Fund under this Agreement shall not constitute or imply any commitment by any Party or contributor to make any further contribution to the Fund.

PART V: FUND MANAGERS

ARTICLE 12

Fund managers

1. The Board shall appoint one or more Fund Managers from time to time on such terms and conditions as it determines.
2. The Board shall lay down investment guidelines for the Fund Managers. In so doing, it shall ensure that the capital of the Fund is invested in a balanced portfolio.
3. The Board may delegate to the Fund Managers responsibility for the day to day administration of the Fund.
4. The Fund Managers shall provide such reports on the value and disposition of the resources of the Fund, such reviews of its performance and such advice on it as are required by the Board.
5. The remuneration and expenses of the Fund Managers in carrying out their duties in administration of the Fund shall be met by the Fund.

PART VI: OPERATION OF THE FUND

ARTICLE 13

Administrative Budget

The Board shall arrange for the preparation of an annual administrative budget by 1 September each year.

ARTICLE 14

Calculation of Real Value

For the purposes of this Agreement "real value" shall be calculated by adjusting the value of contributions when made to current prices in line with movements in the Australian Consumer Price Index.

ARTICLE 15

Reinvestment and Distribution Policy

1. The Board shall establish, and revise from time to time, a reinvestment and distribution policy. In so doing, the Board, in order to contribute to, the long term financial viability of Tuvalu, shall balance the provision of immediate additional revenue for recurrent expenditure against the need to maintain, so far as possible, the value of the Fund's capital at not less than the real value of the initial capital of the Fund as increased by the real value of additional contributions.
2. For the purposes of this Agreement, "reinvestment" shall mean the process whereby Fund returns, whether in the form of income or appreciation, become part of the capital of the Fund.

ARTICLE 16

Reinvestment and Distribution to the Government of Tuvalu

1. At the end of each financial year, the resources of the Fund (after the administration and other costs of the Fund have been met) shall be available for reinvestment and for distribution to the Government of Tuvalu during the following financial year as additional revenue for financing recurrent budgetary expenditure in accordance with this Article.
2. (a) Subject only to paragraph 5 of this Article, the Board shall ensure that an amount of the Fund returns in each financial year is reinvested at the end of that financial year as capital of the Fund, such amount being that necessary to maintain the opening balance of the Fund's capital for the following financial year at the real value of the initial capital of the Fund as increased by the real value of additional contributions.
(b) For the purposes of this Agreement "Fund returns" in any financial year shall mean the returns accruing to the Fund in that year by way of income generated from the Fund resources and the capital appreciation of those resources.
3. (a) To enable the Government of Tuvalu to prepare its National Budget and estimates for the following financial year, by 30 October each year the Board shall inform the Government of Tuvalu of the returns available for distribution in the following financial year.
(b) For the purposes of this Agreement "returns available for distribution" means that amount remaining from the Fund returns after the administration and other costs of the Fund have been met, and after re-investment in accordance with paragraph 2 of this Article.
4. The Board shall distribute to the Government of Tuvalu each year the returns available for distribution or such lesser amount as the Government of Tuvalu may specify. This distribution shall be made at such times and in such proportions as the Government of Tuvalu and the Board agree.
5. If, in any financial year, there are insufficient returns available for distribution to meet the recurrent budgetary needs of the Government of Tuvalu, then the Board and the Government of Tuvalu shall consult and the Board may, having regard to the policy established under Article 15 and with the agreement of two-thirds of the Directors present and voting, agree on an additional payment from any of the resources of the Fund to the Government of Tuvalu.
6. Returns available for distribution to the Government of Tuvalu but not distributed under paragraph 4 of this Article shall be re-invested and shall be deemed to be additional contributions of the Government of Tuvalu in accordance with Article 10.

ARTICLE 17

Temporary Borrowing Powers

1. The Fund shall not accept any loan except in accordance with Article 10 or with paragraph 2 of this Article.
2. (a) For the purpose of making a payment to the Government of Tuvalu in accordance with Article 16, and subject to the unanimous agreement of the Board, the Fund may borrow moneys for such periods not exceeding six months and in such amounts as the Board considers necessary.
(b) The Fund may charge all or any part of the property of the Fund as security for borrowing under sub-paragraph (a).

ARTICLE 18

Financial Year

The financial year of the Fund shall end on 30 September in each year.

ARTICLE 19

Review and Evaluation

1. The Parties shall periodically, at such intervals as they deem appropriate, review the effectiveness of the Fund in accomplishing its purpose as set out in Article 2.
2. The first review shall take place not later than three years after this Agreement enters into force.

PART VII: UNDERTAKINGS OF TUVALU

ARTICLE 20

Undertakings of Tuvalu

1. The Government of Tuvalu shall treat all moneys received by it from the Fund as public moneys of Tuvalu and as such subject to Parliamentary appropriation and scrutiny.
2. The Government of Tuvalu shall on request provide full information and documents to the Board and the Advisory Committee of and in relation to Tuvalu's National Budgets and estimates, the annual accounts and the report of the Auditor-General (including any information or documents which the Auditor-General would be entitled to demand) and financial, social and economic data held by the Government of Tuvalu.
3. The Government of Tuvalu shall ensure that the accounts of and reports relating to the Fund submitted to Tuvalu under Article 23 are promptly laid before the Parliament of Tuvalu.
4. The Government of Tuvalu shall maintain its practice of prudent financial management, control of expenditure and the utilisation of all reasonable opportunities for mobilising additional revenue.
5. The Government of Tuvalu shall use its best endeavours to make additional contributions to the Fund, in accordance with Article 10, from its revenues from whatever source.
6. The Government of Tuvalu shall ensure that legislation is enacted and maintained to give effect to obligations under paragraphs 1 to 3 of this Article.

PART VIII: ACCOUNTS AND AUDIT

ARTICLE 21

Accounts

The Board shall cause the Fund Managers to keep all proper books and records of account of the assets, property, liabilities, income and expenditure and transactions of the Fund, and to produce these promptly in order to facilitate audit.

ARTICLE 22

Audit

1. At the end of each financial year the accounts of the Fund shall be audited by an Auditor (who has no connections with the Fund Managers) appointed by the Board.
2. The Auditor shall satisfy himself that the accounts of the Fund have been properly prepared in accordance with internationally recognised standards of accounting practice and he shall either:
 - (a) state in his report that:
 - (i) the accounts have been properly prepared in accordance with the books and records of the Fund;

- (ii) the books and records of the Fund have been properly kept and contain information adequate for the purposes of his audit;
 - (iii) the balance sheet and income and expenditure account of the Fund give a true and fair view of the Fund's financial position; and
 - (iv) the financial affairs of the Fund have been properly conducted in accordance with this Agreement; or
- (b) notify the Board that he is unable to complete his report as provided in sub-paragraph (a), giving his reasons therefor.
3. The Auditor shall include in his report information on the performance of the Fund Managers in the investment of the Fund in accordance with the guidelines laid down by the Board with particular comparative reference to the performance of managers of other funds of a similar size and nature.
4. The Auditor shall submit his report to the Board.

ARTICLE 23

Annual Reports

Within six months of the end of the financial year the Board shall publish and shall submit to each Party:

- (a) an Annual Report on the activities and management of the Fund, including also the Annual Report of the Advisory Committee under sub-paragraph 1(b) of Article 7;
- (b) the accounts of the Fund for that year audited in accordance with Article 22;
- (c) the report of the Auditor under Article 22.

PART IX: WITHDRAWAL AND TERMINATION

ARTICLE 24

Withdrawal

1. The Government of Tuvalu may give notice to terminate the operations of the Fund in accordance with Article 25, but may not otherwise withdraw from this Agreement.
2. Except as provided in paragraph 3 of Article 25, any other Party may withdraw from this Agreement by depositing an instrument of withdrawal with the Depository.
3. A Party which withdraws from this Agreement shall have no rights under this Agreement except as provided in this paragraph and Article 27 and:
 - (a) no refund of its contributions shall be made to it except on a distribution of assets under paragraph 4 of Article 25; but
 - (b) it shall remain liable for all financial obligations undertaken by it to the Fund in accordance with this Agreement.

ARTICLE 25

Termination and Distribution of Assets

1. Except as provided in paragraph 5 of Article 29, the Fund's operations shall be terminated:
 - (a) by a decision of the Board taken by a majority including the votes of two-thirds of the Directors appointed by the original Parties; or
 - (b) upon the Government of Tuvalu giving notice of termination in accordance with Article 24.

2. Upon termination of operations the Fund shall immediately cease all activities, except those incidental to the orderly realisation and conservation of its assets and the settlement of its obligations.
3. On final settlement of the obligations of the Fund and the distribution of its assets this Agreement shall terminate. Until then the Fund shall remain in existence and all rights and obligations of the Fund and the Parties under this Agreement consistent with the termination of the Fund's operations shall continue unimpaired, except that no Party may withdraw.
4. (a) No distribution of assets shall be made until all liabilities to creditors have been discharged.
(b) Subsequently, the assets of the Fund shall be distributed as follows:
 - (i) the real value of contributions made by the Government of Tuvalu shall be paid to that Government; and
 - (ii) any remaining assets of the Fund shall be distributed to the Government of Tuvalu unless the Board by a two-thirds majority decides otherwise.

PART X: MISCELLANEOUS PROVISIONS

ARTICLE 26

Amendments

1. This Agreement may be amended by further agreement between the Parties in accordance with the procedure set forth in paragraph 2 of this Article or otherwise as they may agree.
2. The Depositary shall, at the request of the Board, circulate proposed amendments to all the Parties. Amendments shall enter into force on the date on which all Parties have deposited an instrument of acceptance or on such later date as is specified in the amendment.

ARTICLE 27

Arbitration

Any dispute, whether during the life of the Fund or on the termination of its operations, between:

- (a) the Fund and a Party or former Party; or
- (b) Parties or former Parties,

which cannot be resolved through consultation, may at the option of the disputants be submitted to arbitration by one arbitrator, to be appointed by the disputants, or, if they are unable to agree on an arbitrator within 30 days, appointed by the President of the International Court of Justice. The decision of the arbitrator shall be final and binding on the disputants.

ARTICLE 28

Depositary

The Depositary for this Agreement shall be the Government of Australia.

ARTICLE 29

Final Provisions

1. This Agreement shall be open for signature and, if appropriate, ratification by the Governments of Tuvalu, Australia, New Zealand and the United Kingdom of Great Britain and Northern Ireland. These Governments shall, after they have become and while they remain Parties to this Agreement, be referred to as "the original Parties".

2. Except as provided in paragraph 4 of this Article, this Agreement shall enter into force on the later of:

- (a) the date on which the legislation provided for in paragraph 6 of Article 20 comes into effect; or
- (b) the date on which three of the Governments referred to in paragraph 1 of this Article have, in accordance with that paragraph, become Parties to this Agreement by signature followed by ratification or by signature without reservation of ratification¹.

3. This Agreement shall enter into force for any Government referred to in paragraph 1 of this Article which becomes a Party after this Agreement enters into force in accordance with paragraph 2, on the date on which that Government deposits its instrument of ratification or signs the Agreement without reservation of ratification.

4. (a) Articles 7, 12 and 16 of this Agreement shall become effective only on the day on which all four Governments referred to in paragraph 1 of this Article have become Parties to this Agreement²;

(b) Article 5 of this Agreement shall become effective only after all Parties have notified the Depositary of the completion of any remaining steps necessary in that connection.

5. Notwithstanding Article 25 of this Agreement, unless all four Governments referred to in paragraph 1 of this Article have become Parties to this Agreement by 1 October 1987, this Agreement shall terminate on that day and, after the payment of all liabilities of the Fund, its assets shall be distributed to the Parties in proportion to their contributions.

6. After entry into force, this Agreement shall be open for accession by Governments and international organisations, other than the original Parties, at the invitation of the Board and in accordance with such arrangements, including an initial contribution to the Fund, as may be agreed by the Board. Decisions of the Board under this paragraph shall be taken with the agreement of all Directors.

7. For a Party which accedes in accordance with paragraph 6 of this Article, this Agreement shall enter into force 30 days after the deposit of its instrument of accession.

In witness whereof the undersigned being duly authorised, have signed this Agreement.

Done at Suva this 16th day of June, 1987 in the English language in a single original.

SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of signature</i>	<i>Date of deposit of instrument of ratification</i>
Australia	16 June 1987*	
New Zealand	16 June 1987*	
Tuvalu	16 June 1987*	
United Kingdom	16 June 1987	11 August 1987

* Signature not subject to ratification

¹ Australia, New Zealand and Tuvalu became Parties to the Agreement on 16 June 1987.

² Articles 7, 12 and 16 entered into effect for the original Parties on 11 August 1987.

ANNEX

1. The amounts of the initial contributions of the original Parties to this Agreement in accordance with Article 9 are:

The Government of Australia	...	...	...	...	Aus \$8.0 million
The Government of New Zealand	...	...	...	...	NZ \$10.0 million
The Government of Tuvalu	...	...	...	...	Aus \$1.6 million
The Government of the United Kingdom of Great Britain and Northern Ireland	...	...	...	...	Aus \$8.5 million

2. The initial contribution of each Party shall be due and payable in accordance with Article 11 in a single sum due within thirty days after this Agreement enters into force for that Party.

3. Contributions shall be made in cash in freely convertible currencies.