



UNTAET/REG/2001/9
29 June 2001

**ON AMENDMENTS TO UNTAET REGULATION 2001/1, ON
THE ESTABLISHMENT OF A DEFENCE FORCE FOR EAST TIMOR**

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council Resolution 1272 (1999) of 25 October 1999,

After consultation in the National Council,

For the purpose of amending UNTAET Regulation 2001/1, providing for the establishment of an East Timor Defence Force during the transitional period, and for publishing an updated engrossment of the said Regulation reflecting such amendments,

Promulgates the following:

Section 1
Amendments

1.1 The following amendments are made to the preambular paragraphs of UNTAET Regulation 2001/1:

The third preambular paragraph is amended by deleting the words “and in recognition that the Council may propose future amendment hereof”.

Two new preambular paragraphs are inserted after the fourth preambular paragraph, in the following words:

“Affirming that Falintil will form the foundation of the East Timor Defence Force,

Recognising the important role Falintil has played in the history of East Timor and the esteem in which it is held by the people of East Timor,”

1.2 Subsection 1.1(f) of UNTAET Regulation 2001/1 is amended by deleting the words “or part of the sea bed or the sub-soil of the deep sea bed” and inserting in their place the words “to the extent of the territorial waters of East Timor”.

1.3 Subsection 1.1(p) of UNTAET Regulation 2001/1 is amended by deleting the subsection in its entirety.

- 1.4 Subsection 2.2(a) of UNTAET Regulation 2001/1 is amended by inserting after the word “territory” a comma, followed by the words “independent of any political affiliation”.
- 1.5 Subsection 2.2(b) of UNTAET Regulation 2001/1 is amended by deleting the words “and other emergencies” and inserting in their place a semicolon followed by the words “provided, however, that the Defence Force shall not be mobilized or utilized in matters linked to internal public order, police issues or social conflicts”.
- 1.6 Subsection 2.3 of UNTAET Regulation 2001/1 is amended by deleting the entire text of the section and substituting in its place the words “During the transitional period the Defence Force shall train and prepare itself to fulfil the mission specified in Section 2.2. It shall not engage, however, in any independent military defence activities other than in support of civilian communities as provided in Section 2.2.”
- 1.7 Section 7 of UNTAET Regulation 2001/1 is amended by adding after subsection 7.1 a new subsection 7.2 in the following words:
 - “7.2 A person may be a member of the Defence Force only if:
 - (a) the person was born in East Timor; or
 - (b) the person was born outside East Timor, but the person’s father or mother was born in East Timor.”
- 1.8 Subsection 9.3 of UNTAET Regulation 2001/1 is amended by deleting the words “war or” in both instances where they appear in that subsection.
- 1.9 Subsection 11.1(c) of UNTAET Regulation 2001/1 is amended by redenomination as Subsection 11.1(b) and by inserting after the word “Regulations” a comma followed by the word “Directives”.
- 1.10 Subsection 15.2 of UNTAET Regulation 2001/1 is amended by deleting the entire text thereof and inserting in its place the words “Funds for payment of remuneration, allowances and other benefits as specified in Directives issued pursuant to the preceding subsection shall be provided only in accordance with UNTAET Regulation 2000/20.”
- 1.11 Subsection 16.1 of UNTAET Regulation 2001/1 is amended by deleting the words “war or”.
- 1.12 Section 21 of UNTAET Regulation 2001/1 is amended by redenomination as Section 24.
- 1.13 Immediately following Section 20 of UNTAET Regulation 2001/1, new Sections 21, 22 and 23 are added in the following words:

“Section 21
Political Activities by Members of the Defence Force”

21.1 Members of the Defence Force retain the right to vote in all elections in which they are individually qualified.

21.2 Members of the Defence Force may not:

- (a) be members of a political party, organisation or association or participate in any activities of a political party, organisation or association; or
- (b) publicly state or suggest any opinion of a political nature.

21.3 Members of the Regular and Reserve Defence Force may stand as candidates for election in national and local level elections; provided, however, that upon proof to the Chief of the Defence Force of acceptance of the application for candidacy by the member, the following is to occur:

- (a) *officers* of the Regular and Reserve Defence Force must be terminated from the Defence Force;
- (b) *soldiers* of the Regular and Reserve Defence Force must be discharged from the Defence Force.

21.4 Subsection 21.2 is a temporary provision which shall remain in force only until the coming into force of a Constitution for East Timor.

Section 22
Impersonating a Member of the Defence Force

22.1 The uniform of the Defence Force for East Timor may be worn only by members of the Defence Force.

22.2 A person who is not a member of the Defence Force shall not state or represent in any way that the person is a member of the Defence Force.

Section 23
Forfeiture of Salary - Members Absent Without Leave

23.1 Any member duly found to have been absent without leave for a period of 24 hours or more, upon being so found, forfeits all salary and allowances that accrued to the member during the period

- (a) that begins at the end of the day on which the member first became absent; and
- (b) that ends at the end of the day on which the member ceased to be absent.”

Section 2
Publication of Updated Engrossment

An updated engrossment of UNTAET Regulation 2001/1 which reflects the amendments provided in Section 1 of the present Regulation is annexed to the present Regulation and shall be published as an integral part hereof.

Section 3
Entry Into Force

The present Regulation shall enter into force on 29 June 2001.

Sergio Vieira de Mello
Transitional Administrator

ANNEX TO UNTAET/REG/2001/9

UNTAET/REG/2001/1

31 January 2001

As Amended by UNTAET/REG/2001/9

29 June 2001

ON THE ESTABLISHMENT OF A DEFENCE FORCE FOR EAST TIMOR

The Special Representative of the Secretary-General (hereinafter: Transitional Administrator),

Pursuant to the authority given to him under United Nations Security Council Resolution 1272 (1999) of 25 October 1999,

After consultation in the National Council,

For the purpose of providing for the establishment of an East Timor Defence Force during the transitional period,

Affirming that Falintil will form the foundation of the East Timor Defence Force,

Recognising the important role Falintil has played in the history of East Timor and the esteem in which it is held by the people of East Timor,

Promulgates the following:

**Section 1
Definitions**

1.1 Whenever used in the present Regulation, the following terms shall have the following meanings:

- (a) *administrative instruction* means a written instrument issued by the Transitional Administrator, his civilian delegate, or the Chief of the Defence Force, prescribing or relating to any matter referred to in Section 20 of the present Regulation;
- (b) *aircraft* means aeroplanes, helicopters, seaplanes, balloons, kite balloons, airships and other machines for flying
- (c) *ammunition* means any implement designed or intended for use in a firearm as a projectile or containing combustible material designed or intended to create an expansion of gases in a firearm to expel a projectile;
- (d) *armaments and equipment* means movable property which is allocated for the conduct of military training and operations. It may include, by way of illustration and not limitation, personnel uniforms, field gear, supplies, vehicles, vessels, aircraft, heavy weapons, firearms, firearm imitations, ammunition, explosives, tools, fuel, and rations.
- (e) *Chief of the Defence Force* means the Chief of Defence Force appointed

under Section 4.2 of the present Regulation;

- (f) *defence area* means any land, water, air space to the extent of the territorial waters of East Timor, or any building or part of a building that is reserved or set apart, used or otherwise controlled for defence purposes;
- (g) *defence emergency* means any natural disaster or other threat to the peace or security of East Timor determined by the Transitional Administrator to be of sufficient magnitude to warrant a high level military alert or mobilization of the Defence Force Reserve pursuant to Section 16 of the present Regulation;
- (h) *explosive* means any chemical compound or mechanical mixture containing any oxidizing and combustible components in such proportions, quantities or packing, that ignition by fire, friction, concussion, percussion or detonation of any part thereof may and is intended to cause an explosion. Explosives include, by way of illustration and not limitation, gunpowder, powders used for blasting, dynamite, detonating fuses or agents, smokeless powder, grenades, mines or any explosive device. They do not include motor fuels unless incorporated into other mixtures for the purpose of causing an explosion;
- (i) *firearm* means any device, whether or not assembled, operable or incomplete, which is designed or adapted or which may readily be converted to discharge a projectile by means of expansion of gases produced in the device by the ignition of combustible material, and including any accessory designed or intended for attachment to such a device;
- (j) *firearm imitation* means any object which has the appearance of a firearm and which could be reasonably mistaken for a firearm;
- (k) *officer* means a person holding a rank in the Defence Force prescribed in Section 17.1 of the present Regulation;
- (l) *possess* means to have physical dominion or control, directly or indirectly. Possession occurs when someone has a thing on or about his person, or within premises or vehicles over which he has custody, control or easy access;
- (m) *soldier* means a person holding a rank in the Defence Force prescribed in Section 17.3 of the present Regulation;
- (n) *vehicle* means a conveyance, whether or not manned, that is propelled, boosted or towed for transporting a burden on land, includes an amphibious vehicle while on land;
- (o) *vessel* means any kind of water craft, however propelled and whether manned or unmanned, and includes an amphibious vehicle while in the water;

Section 2
Establishment and Mission of the Defence Force

- 2.1 The present regulation establishes the Defence Force for East Timor.
- 2.2 The mission of the Defence Force consists of:
- (a) providing for the military defence of East Timor, its people and its territory, independent of any political affiliation; and
 - (b) providing assistance to the civilian community at the request of the civilian authorities during natural disasters; provided, however, that the Defence Force shall not be mobilised or utilised in matters linked to internal public order, police issues or social conflicts.
- 2.3 During the transitional period the Defence Force shall train and prepare itself to fulfil the mission specified in the preceding sub-section. It shall not engage, however, in any independent military defence activities other than in support of civilian communities as provided in Section 2.2.

Section 3
Duty of the Defence Force

- 3.1 Subject to the present Regulation, and as may be provided in other UNTAET Regulations, it is the duty of the Defence Force and of members of the Defence Force to carry out the lawful orders of the Transitional Administrator and of superior officers in achieving the purposes of the present Regulation.
- 3.2 In performing their duties during peacetime, all members of the Defence Force shall act in accordance with international human rights law as stated in Section 2 of UNTAET Regulation 1999/1.
- 3.3 In performing their duties during armed conflict, all members of the Defence Force shall observe the principles of international human rights law which apply in armed conflict, as well as the principles of international humanitarian law, and in particular, those reflected in:
- (a) The Geneva Conventions of August 12, 1949;
 - (b) The Protocols Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International and Non International Armed Conflict of 8 June 1977; and
 - (c) The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980.

Section 4
Command and Control of the Defence Force

4.1 The Defence Force will at all times be under the control of the Transitional Administrator. The Transitional Administrator shall have supreme command, control and administrative authority over the Defence Force. The powers vested in the *Chief of the Defence Force* by virtue of Section 4.3 shall be exercised subject to and in accordance with any directions of the Transitional Administrator.

4.2 The Transitional Administrator may appoint an officer of the East Timor Defence Force to be Chief of the Defence Force.

4.3 Subject to Section 4.1, the *Chief of the Defence Force* shall command the Defence Force.

4.4 The *Chief of the Defence Force* may be suspended or dismissed at any time by the Transitional Administrator.

Section 5

Components of the Defence Force

5.1 The East Timor Defence Force consists of two components, namely the Regular Defence Force and the Defence Force Reserve.

5.2 The Regular Defence Force consists of:

(a) *officers* appointed to, and *soldiers* enlisted in, that force, and

(b) *officers* and *soldiers* transferred to that force from the Defence Force Reserve.

5.3 The Defence Force Reserve consists of

(a) *officers* appointed to, and *soldiers* enlisted in, that force, and

(b) *officers* and *soldiers* transferred to that force from the Regular Defence Force.

Section 6

Criminal Responsibility and Discipline of the Defence Force

6.1 Members of the Defence Force are subject to the civil criminal law in force in East Timor and to any Code of Military Discipline which hereafter may be provided by UNTAET Regulations.

6.2 In addition to other grounds of criminal responsibility under the civil criminal law in force in East Timor, including UNTAET Regulation 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, the fact that any of the acts referred to in Sections 4 to 7 of UNTAET Regulation 2000/15 was committed by

a subordinate does not relieve his superior of criminal responsibility if the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

6.3 The fact that a member of the Defence Force acted pursuant to an order of a superior shall not relieve him of criminal responsibility.

Section 7 Voluntary Service

7.1 The Defence Force shall be made up entirely of persons who volunteer and are accepted for service in the Defence Force.

7.2 A person may be a member of the Defence Force only if:

- (a) the person was born in East Timor; or
- (b) the person was born outside of East Timor but the persons father or mother was born in East Timor.

Section 8 Minimum Age for Recruitment to the Defence Force

8.1 Members of the Defence Force must be at least 18 years of age on recruitment to the Defence Force.

Section 9 Appointment of Officers

9.1 The Transitional Administrator or his civilian delegate may, in accordance with such conditions and subject to such qualifications or requirements as are prescribed or provided for by *administrative instructions*, by instrument in writing:

appoint persons to be *officers* of the Defence Force; and

promote *officers* of the Defence Force, and

- (c) issue commissions to persons so appointed.

9.2 In appointing a person to be an *officer* of the Defence Force, the Transitional Administrator or his civilian delegate may express the appointment to be for a specified period of service.

9.3 If the period of service in the Defence Force for which an *officer* was appointed expires during a time of *defence emergency*, the term of his appointment as an *officer* of the Defence Force shall be deemed to be extended until the end of the time of *defence emergency*.

9.4 An *officer* of the Defence Force appointed for a specified period of service may,

on or before the expiration of that period, volunteer for a further period of service or for a permanent appointment. The Transitional Administrator or his civilian delegate may, by written instrument, extend the appointment for a further specified period of service or convert the appointment to a permanent appointment.

9.5 A person appointed as an *officer* of the Defence Force shall take and subscribe to the oath or affirmation of an *officer* in a form prescribed by *administrative instructions*.

9.6 The taking and subscribing of the oath or affirmation of an *officer*:

- (a) constitutes acceptance of appointment; and
- (b) binds the person to serve as an *officer* in the Defence Force, and to act in conformance with the oath or affirmation.

9.7 The appointment or promotion of an *officer* under this regulation is not a civil contract between the East Timor Transitional Administration and the person appointed or promoted.

Section 10 Termination of the Appointments of Officers

10.1 The Transitional Administrator or his civilian delegate may terminate the appointment of an *officer* on any one or more of the following grounds:

- (a) the *officer* has been absent without leave for a continuous period of at least three months;
- (b) the *officer* has been convicted of an offence and the Chief of the Defence Force has certified in writing that, having regard to the nature and seriousness of the offence, the retention of the *officer* is not in the interests of the Defence Force;
- (c) the *officer* is inefficient or incompetent for reasons or causes within his own control;
- (d) the behaviour of the *officer* has been such that the retention of the *officer* is not in the interests of the Defence Force;
- (e) for reasons or causes within the *officer's* control, the *officer's* performance is such that the retention of the *officer* is not in the interests of the Defence Force.

Section 11 Enlistment of Soldiers

11.1 A person may volunteer to serve as a *soldier* in the Defence Force:

- (a) for a fixed period; or

- (b) until attaining retiring age, under such criteria as may be provided in UNTAET Regulations, Directives or administrative instructions.

11.2 If accepted for service in the Defence Force, the person shall take and subscribe to the oath or affirmation of a *soldier* in a form prescribed by administrative instructions.

11.3 The taking and subscribing of the oath or affirmation of a *soldier*:

- (a) constitutes the enlistment of the person in the Defence Force for that period or until attaining retiring age, as the case may be; and
- (b) binds the person to serve as a *soldier* in the Defence Force, and to act in conformance with the oath or affirmation.

11.4 The enlistment of a *soldier* under this regulation is not a civil contract between the East Timor Transitional Administration and the person appointed or promoted.

Section 12 Discharge of Soldiers

12.1 A *soldier* may at any time be discharged by the *Chief of the Defence Force* for such reasons and according to such procedure as may be prescribed in *administrative instructions*.

Section 13 Obligations of Service

13.1 Members of the Regular Defence Force are bound to render continuous full time military service.

13.2 Members of the Defence Force Reserve are not bound to render continuous full time military service otherwise than:

- (a) as provided in the present Section; or
- (b) when mobilized for continuous full time service under Section 16.1 of the present Regulation.

13.3 The *Chief of the Defence Force* shall issue *administrative instructions* fixing training periods in respect of the Defence Force Reserve. Members of the Defence Force Reserve are bound to render in each training period continuous full time military service for such periods as are fixed by or in accordance with *administrative instructions*.

Section 14 Non Discrimination

14.1 The Defence Force shall not discriminate against any of its members or any person enlisting into the force on the ground of race, colour, sex, religion, political or other opinion, language, ethnic or social origin, property, birth or other status.

Section 15
Compensation of Members of the Defence Force

15.1 The Transitional Administrator may, by Directive, make determinations providing for:

- (a) the remuneration of members of the Defence Force;
- (b) the payment of allowances or the provision of other benefits to members of the Defence Force;
- (c) the payment of additional compensation to members of the Defence Force or to families of members of the Defence Force.

15.2 Funds for payment of remuneration, allowances and other benefits as specified in Directives issued pursuant to the preceding subsection shall be provided only in accordance with UNTAET Regulation 2000/20.

Section 16
Mobilization of the Defence Force Reserve

16.1 In times of *defence emergency* the Transitional Administrator may order the whole or any part of the Defence Force Reserve, or any member of the Defence Force Reserve, to be on continuous full time military service.

16.2 All members or units of the Defence Force Reserve to whom Section 16.1 applies shall remain on continuous full time service until the Transitional Administrator orders the termination of such service.

Section 17
Ranks in the Defence Forces

17.1 The officer ranks in the Defence Force are as follows:

- (a) Brigadier General
- (b) Colonel
- (c) Lieutenant Colonel
- (d) Major
- (e) Captain
- (f) Lieutenant
- (g) Second Lieutenant

17.2 The Transitional Administrator may modify by administrative instruction the rank structure for officers provided in section 17.1 of the present Regulation.

17.3 The enlisted ranks in the Defence Force are as follows:

- (a) Sergeants

- (i) Sergeant Major
 - (ii) Chief Sergeant
 - (iii) Sergeant Adjutant
 - (iv) Sergeant
 - (v) Furriel
- (b) Privates
- (i) Corporal
 - (ii) Private
- (c) Recruits
- (i) Officer Recruit
 - (ii) Recruit Soldier

17.4 The Transitional Administrator may modify by administrative instruction the rank structure of the enlisted ranks of the Defence Force provided in section 17.3 of the present Regulation.

Section 18 Defence Areas

18.1 The Transitional Administrator or his civilian delegate may prohibit or restrict access by any person to any *defence area* and may make provision for the control and security of any *defence area*.

Section 19 Armaments and Equipment

19.1 The Defence Force is authorized to acquire, maintain and use such *armaments and equipment* for military purposes as may be allocated to it under authority of UNTAET Regulations, subject to the provisions of this Section.

19.2 Members of the Defence Force are authorized to *possess* and make such use of *armaments and equipment* as may be provided in command policies and *administrative instructions*.

19.3 The *Chief of the Defence Force* shall adopt command policies and shall issue *administrative instructions* which ensure

- (a) that *armaments and equipment* shall be used only for authorized military purposes and in a manner suitable to those purposes;
- (b) that *armaments and equipment* are appropriately safeguarded against theft, waste and spoilage;
- (c) that *firearms, ammunition and explosives* under the control of the Defence Force or members of the Defence Force are specifically accounted for at all times and are used with due regard for safety.

Section 20
Administrative Instructions

20.1 The Transitional Administrator may issue *administrative instructions*, not inconsistent with this Regulation, prescribing all matters that are necessary or convenient to be prescribed for giving effect to or carrying out the purposes of this Regulation.

20.2 The Transitional Administrator may delegate the power to issue administrative instructions to the Deputy Transitional Administrator or another civilian delegate; provided that the power to issue administrative instructions described in sections 15.1, 17.2 and 17.4 of the present Regulation shall not be delegated. The Transitional Administrator may also delegate the power to issue administrative instructions to the Chief of the Defence Force on matters relating but not to limited to:

- (a) the operations, organization, training, discipline, efficiency and good management of the Defence Force;
- (b) the welfare of members of the Defence Force and their dependants;
- (c) the enlistment, appointment, promotion and discharge of members of the Defence Force;
- (d) rules of engagement and the regulation of arms practices;
- (e) the acquisition, use, maintenance and accountability of *armaments and equipment*;
- (f) the preservation of public safety in or at any military exercise, operation or practice;
- (g) the post mortem examination and disposition of the bodies of members of the Defence Force who die while on service; and
- (h) the leave of absence of members of the Defence Force.

Section 21
Political Activities by Members of the Defence Force

21.1 Members of the Defence Force retain the right to vote in all elections in which they are individually qualified.

21.2 Members of the Defence Force may not:

- (a) be members of a political party, organisation or association or participate in any activities of a political party, organisation or association; or
- (b) publicly state or suggest any opinion of a political nature.

21.3 Members of the Regular and Reserve Defence Force may stand as candidates for election in national and local level elections; provided, however, that upon proof to the Chief of the Defence Force of acceptance of the application for candidacy by the member, the following is to occur:

- (a) *officers* of the Regular and Reserve Defence Force must be terminated from the Defence Force;
- (b) *soldiers* of the Regular and Reserve Defence Force must be discharged from the Defence Force.

21.4 Subsection 21.2 is a temporary provision which shall remain in force only until the coming into force of a Constitution for East Timor.

Section 22

Impersonating a Member of the Defence Force

22.1 The uniform of the Defence Force for East Timor may be worn only by members of the Defence Force.

22.2 A person who is not a member of the Defence Force is not to state or represent in any way that the person is a member of the Defence Force.

Section 23

Forfeiture of Salary - Members Absent Without Leave

23.1 Any member duly found to have been absent without leave for a period of 24 hours or more, upon being so found, forfeits all salary and allowances that accrued to the member during the period:

- (a) that begins at the end of the day on which the member first became absent; and
- (b) that ends at the end of the day on which the member ceased to be absent.

Section 24

Entry into Force

24.1 The present regulation shall enter into force upon signature.

/signed/
Sergio Vieira de Mello
Transitional Administrator