

ESTABLISHMENT AND MAINTENANCE OF A UNITED NATIONS
MEMORIAL CEMETERY IN KOREAReport of the Secretary-General on the conclusion
of the Agreement between the United Nations and
the Republic of Korea for the establishment and
maintenance of a United Nations Memorial Cemetery
in Korea

The General Assembly, by resolution 977 (X) of 15 December 1955, decided that the cemetery at Tanggok, near Pusan, in the Republic of Korea, should be established and maintained as a United Nations Memorial Cemetery, in honour of all those who served with forces which fought under the United Nations Command in Korea. By the same resolution, the Assembly requested the Secretary-General, acting on the advice of a Committee consisting of representatives of those countries whose men lie in graves in the cemetery, to arrange for the negotiation of an Agreement with the Republic of Korea in order to secure the permanent use of the site of the Memorial Cemetery, and to make all necessary arrangements for the establishment and permanent maintenance of the cemetery.

In accordance with this authority, the Secretary-General, in consultation with the Committee established under General Assembly resolution 977 (X), has negotiated and concluded an Agreement between the United Nations and the Republic of Korea for the establishment and maintenance of the Cemetery. This Agreement was signed at United Nations Headquarters, by the Secretary-General and by the Foreign Minister of the Republic of Korea, on 6 November 1959. It entered into force, in accordance with the provisions of article XI thereof on 11 December 1959, the date upon which the Secretary-General was notified by the Government of the Republic of Korea of the ratification of the Agreement. The text of the Agreement is submitted to the General Assembly for its information as an annex to the present report.

AGREEMENT BETWEEN THE UNITED NATIONS AND THE
REPUBLIC OF KOREA FOR THE ESTABLISHMENT AND
MAINTENANCE OF A UNITED NATIONS MEMORIAL
CEMETERY IN KOREA

Whereas the Acting Minister of Foreign Affairs of the Republic of Korea on 9 August 1955 wrote to the Secretary-General advising him of the decision of his Government to offer gratis to the United Nations the ground of the Cemetery at Tanggok, near Pusan, in dedication to the ideals of the United Nations and in tribute to the services and sacrifices rendered by the United Nations soldiers in Korea, and

Whereas the General Assembly of the United Nations on 15 December 1955 adopted resolution 977 (XI) as follows:

"The General Assembly,

"Desiring to pay tribute to all those who, pursuant to the call of the United Nations, laid down their lives in resisting aggression in Korea and in upholding the cause of peace and freedom,

"Noting that, in a cemetery at Tanggok, near Pusan, in the Republic of Korea, there are the graves of nearly two thousand men who served with forces which fought under the United Nations Command,

"Noting further that up to the present time this cemetery has been cared for by the United Nations Command but that permanent arrangements have not yet been made for its maintenance,

"1. Decides that the cemetery at Tanggok, near Pusan, in the Republic of Korea, should be established and maintained as a United Nations Memorial Cemetery in Korea in honour of the dead;

"2. Requests the Secretary-General, acting on the advice of a Committee consisting of representatives of those countries whose men still lie in graves in the cemetery:

"(a) To arrange for the negotiation of an agreement with the Republic of Korea in order to secure the permanent use of the site of the memorial cemetery;

"(b) To make all necessary arrangements for the establishment and permanent maintenance of the cemetery;

"3. Authorizes the Secretary-General to make provision in the budget of the United Nations for the allocation of the necessary funds for this purpose."; and

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Whereas the National Assembly of the Republic of Korea on 17 November 1955 adopted the following resolution:

"The National Assembly,

"Expressing gratitude and paying high tribute to the United Nations Forces which fought in Korea to repel aggressors in accordance with United Nations Resolutions following the incident of 25 June 1950; and

"With a view to keeping the precious sacrifices of those who were killed in battle in everlasting memory and commemorating their distinguished services;

"Recommends that the Government propose to the United Nations General Assembly the establishment of a United Nations Cemetery in Korea as a holy place,"; and

Whereas it is desired to give effect to the foregoing resolutions and to honour those who died in the service of the United Nations in Korea,

The United Nations and Republic of Korea, through their duly appointed representatives, have agreed as follows:

ARTICLE I

A United Nations Memorial Cemetery in Korea shall be established in permanent tribute to all those, who, pursuant to the call of the United Nations, laid down their lives in resisting aggression in Korea and in upholding the cause of peace and freedom.

ARTICLE II

(1) The Republic of Korea grants to the United Nations in perpetuity and without charge the land at Tanggok, near Pusan, on which the Memorial Cemetery stands, and which is indicated in blue on the plat initialed "ne varietur" and annexed to this Agreement. This land is more particularly described as follows:

"All that land enclosed by a line drawn from point 1 in front of the main gate of the Cemetery upon a bearing S 31°05'02" for a distance of 124.25 ft. to point 2; thence upon a bearing S 35°25'10" E for a distance of 106.98 ft. to point 3; thence upon a bearing S 31°02'26" E for a distance of 72.78 ft. to point 4; thence upon a bearing S 24°29'21" E for a distance of 125.57 ft. to point 5; thence upon a bearing S 6°00'10" E for a distance of 59.48 ft. to point 6; thence upon a bearing N 89°54'32" E for a distance of 57.18 ft. to point 7; thence upon a bearing S 38°15'33" E for a distance of 209.94 ft. to

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point 8; thence upon a bearing S 26°29'01" E for a distance of 106.58 ft. to point 9; thence upon a bearing S 34°55'15" W for a distance of 19.88 ft. to point 10; thence upon a bearing S 49°37'02" E for a distance of 58.59 ft. to point 11; thence upon a bearing N 43°26'51" E for a distance of 39.15 ft. to point 12; thence upon a bearing S 57°33'00" E for a distance of 789.64 ft. to point 13; thence upon a bearing N 31°18'39" E for a distance of 1,016.20 ft. to point 14; thence upon a bearing N 56°55'48" W for a distance of 744.82 ft. to point 15; thence upon a bearing N 39°57'45" E for a distance of 81.74 ft. to point 16; thence upon a bearing N 55°22'20" W for a distance of 26.43 ft. to point 17; thence upon a bearing S 74°12'04" W for a distance of 95.64 ft. to point 18; thence upon a bearing N 61°50'41" W for a distance of 357.73 ft. to point 19; thence upon a bearing S 89°32'10" W for a distance of 367.86 ft. to point 20; thence upon a bearing S 44°09'35" W for a distance of 146.56 ft. to point 21; thence upon a bearing S 34°15'08" W for a distance of 177.53 ft. to point 22; thence upon a bearing S 54°19'39" W for a distance of 173.33 ft. to point 1."

(2) The Republic of Korea shall take whatever steps are necessary under its law to obtain and transfer to the United Nations full and complete title to the land described in paragraph (1) of this article, free and clear of all encumbrances and restrictions save those specifically provided in the present Agreement; and the Republic of Korea shall guarantee and defend, at its own expense, the title of the United Nations to such land against any claims or litigation of whatever nature or from whatever source.

(3) The United Nations may acquire such additional land as it may consider necessary for the purposes of the present Agreement, including the provision of residence or office accommodation. The Republic of Korea shall, if requested by the United Nations, assist in the acquisition of such land through laws and procedures available to it. The provisions of paragraph 1 of Article IV and Article IX of the present Agreement shall apply to such additional land as may be acquired pursuant to the present paragraph.

ARTICLE III

(1) The United Nations shall use the land described in Article II solely for the purpose of a Memorial Cemetery. The United Nations shall have the right to make all arrangements considered by it necessary for the establishment, maintenance, administration, and operation of a permanent cemetery on this land. These arrangements include, but are not limited to, the permanent care and maintenance of the Cemetery and the graves therein; the keeping of a registry and

records; religious or commemorative ceremonies; burials, exhumations for reburial or movement, and removal of bodies to their home countries; and the installation on the land of memorials, monuments, grave markers, and all structures, boundary walls, buildings, utilities, roads and horticultural plantings as it may consider appropriate for the embellishment, maintenance, administration and operation of the Memorial Cemetery.

(2) The United Nations undertakes to maintain permanently the Memorial Cemetery in a suitable and dignified manner and enjoys the right to use and, where necessary, maintain and repair the approach road to the Memorial Cemetery from the junction of that road with the airport road east of the village of Kodonggok and west of the village of Chigok, thence south of the village of Sokp'o and thence east to the Memorial Cemetery. Memorials, monuments, grave markers, horticultural plantings and other donations offered by States, organizations or private persons, shall be approved and accepted by the United Nations, provided that such donations are in full harmony with the general character of the Memorial Cemetery and do not detract from the uniformity of the Cemetery and its component parts. Whenever a donation is offered for any particular section of the Memorial Cemetery the United Nations shall, before taking a decision on the approval and acceptance of such donation, consult with the Member or Members of the United Nations whose men are buried in that section of the Memorial Cemetery.

(3) The Republic of Korea shall take all reasonable steps to ensure that the dignity of the Memorial Cemetery is not prejudiced by the use made of the land in the vicinity. To this end the area marked in green on the annexed plat will be restricted to agricultural, residential and other uses not prejudicial to the dignity of the Memorial Cemetery. Such area is more particularly described as follows:

"All that area enclosed by a line drawn from the junction between the airport road and the approach road to the Cemetery lying east of the village of Kodonggok and west of the village of Chigok, then following the road through Chigok south-east to a point 1,500 ft. north-west of the road junction at the north-west limits of Pump'o; thence generally south along the crest of the hills for a distance of 3,300 ft; thence due west to the Tanggok-Yongdang-ni road and along that road generally north north-west to Tangook; thence west to the Sokp'o harbour road; thence north along the road to the starting point."

ARTICLE IV

(1) It is recognized that the provisions of the Convention on the Privileges and Immunities of the United Nations (hereinafter called "the Convention") shall apply with full force and effect to the United Nations Memorial Cemetery, to the United Nations Custodian and other United Nations officials and employees, and to all relevant operations conducted in accordance with the present Agreement, except that privileges and immunities from jurisdiction shall not be claimed for locally-recruited personnel:

- (a) in respect of such personnel as are assigned to hourly rates;
- (b) in respect of (b), (c), (d), (e), (f) and (g) referred to in Section 18, Article V of the Convention.

(2) Without in any way prejudicing or detracting from the privileges and immunities as set out in the Convention referred to in the foregoing paragraph of this article, it is understood that:

- (a) While extraterritoriality shall not apply to the Memorial Cemetery, the grounds of the Cemetery shall be inviolable. National, provincial and local officers or officials of Korea, whether administrative, judicial, military or police, shall not enter the Memorial Cemetery to perform official duties except at the request or with the authorization of the United Nations Custodian. However, when a request is made by the competent authorities to enter the Memorial Cemetery for the investigation of suspected crimes, the United Nations Custodian shall permit the entry of such officers or officials for the said purpose, unless there is a just reason for refusal;
- (b) Burials in and removals from the Memorial Cemetery shall be exempt from generally applicable laws and regulations relating to hygiene and the securing of permits in connexion with the burial, exhumation for reburial or movement, and removal of bodies. However, the United Nations undertakes to ensure that such work will be conducted in a manner which will in no way constitute a danger to public health and it shall make such sanitary arrangements for this purpose as may be necessary. The United Nations shall have the right to make other regulations operative within the Memorial Cemetery which it may consider necessary for the purposes of this Agreement. Laws and regulations of the Republic of Korea which are inconsistent with a

regulation authorized by this paragraph, to the extent of such inconsistency, shall not be applicable within the Memorial Cemetery;

(c) The United Nations shall be permitted the use of railroads, highways, navigable waters, ports, port installations, buildings, utilities and other facilities, together with the necessary services and Korean labour to the extent required for the accomplishment of the purposes of this Agreement, subject only to payment of the established rates of compensation therefor less any direct or indirect taxes included in such rates, exemption from which shall be granted by the Republic of Korea. The United Nations may import into Korea from any country and re-export therefrom after use thereof, free of customs duties and other taxes, such equipment, supplies and materials as are necessary for the accomplishment of any of the purposes of this Agreement;

(d) It is understood that the provisions relating to taxation set out in the Convention referred to in paragraph (1) of this article are to be interpreted according to the principle that there should be no increase in the cost of any materials or service to the United Nations as a result of taxes of any kind levied by the Republic of Korea by national, provincial or local governments.

ARTICLE V

(1) Visits to and the conduct to be observed by the public in the Memorial Cemetery may be made subject to conditions prescribed by the United Nations Custodian.

(2) The Republic of Korea shall permit and ensure entry into and transit across its territory for the purpose of full and undisturbed access to and exit from the Memorial Cemetery at all times for United Nations officials and employees, representatives of States whose forces served in Korea under the United Nations Command or of States which have been represented on United Nations Commissions in Korea, next of kin of men buried in the Memorial Cemetery, and other visitors authorized by the United Nations.

(3) The appropriate Korean authorities shall exercise due diligence to ensure that the tranquility of the Memorial Cemetery is not disturbed by the unauthorized

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entry of groups of persons from outside or by disturbances in its vicinity. The Republic of Korea shall also provide such assistance as may be requested by the United Nations Custodian for the safeguard and protection of the Memorial Cemetery and the personnel and property connected therewith.

ARTICLE VI

(1) A State having forces serving under the United Nations Command in Korea may under conditions prescribed by the United Nations Custodian and subject to available space, arrange for burials in the United Nations Memorial Cemetery of any members of its forces who may die while serving under the United Nations Command in Korea. The United Nations may arrange for burial in the United Nations Memorial Cemetery of any person who may die while serving with the United Nations or any of its organs in Korea.

(2) The United Nations or, under conditions prescribed by the United Nations Custodian, a State whose men lie in graves in the Memorial Cemetery, shall have the right to exhume and remove bodies for return to their home countries.

ARTICLE VII

(1) The Secretary-General shall have the responsibility for the implementation of this Agreement on behalf of the United Nations. On important matters of policy, and particularly with respect to the plan for the Memorial Cemetery, the Secretary-General shall be advised by a United Nations Memorial Cemetery Committee consisting of representatives of those countries whose men lie buried in graves in the Memorial Cemetery.

(2) The Secretary-General shall designate a United Nations Custodian who, under the authority of the Secretary-General, shall be responsible for the maintenance and administration of the Cemetery and for liaison with the Republic of Korea. The Secretary-General may appoint or assign such other officials and consultants as may be necessary and the United Nations Custodian may employ local labour or make such contracts for labour, service, materials and supplies, as may be necessary for the maintenance and administration of the Cemetery.

(3) The Government of the Republic of Korea shall ensure the co-operation of the provincial and local governments and other authorities of the Republic of Korea,

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for the purpose of a full implementation of this Agreement. The Government of the Republic of Korea shall designate an official who shall be responsible on behalf of the Republic of Korea for maintaining liaison with the United Nations Custodian on all matters relating to the implementation of this Agreement.

ARTICLE VIII

Any dispute between the United Nations and the Republic of Korea concerning the interpretation or application of this Agreement which is not settled by negotiation or other agreed mode of settlement shall be referred for final settlement to a Tribunal of three arbitrators, one to be named by the Secretary-General of the United Nations, one by the Government of the Republic of Korea and a third to be chosen by the two arbitrators so named. If the two arbitrators should fail to agree on the choice of a third, or if one party should fail to appoint an arbitrator, the President of the International Court of Justice may be asked by one party to appoint an arbitrator. The failure of one party to appoint an arbitrator shall not preclude the making of a binding award. If any of the arbitrators should die, resign or become unable to act before the award has been given, the vacancy shall be filled by the method laid down in this article for the original appointment.

ARTICLE IX

(1) Should the United Nations for any reason cease to maintain the Memorial Cemetery, the title to the land shall be vested in a Memorial Cemetery Commission to be composed of one representative of the Republic of Korea and one representative of each of the other States whose men lie buried in graves in the Memorial Cemetery. In such event, the Memorial Cemetery Commission, acting by majority vote or by such other procedure as it may decide, shall have the right to appoint a Custodian to maintain and administer the Memorial Cemetery in accordance with the terms of the present Agreement and shall succeed to all rights and accept all obligations of the United Nations under the present Agreement.

(2) Should the land for any reason cease to be maintained as a Memorial Cemetery by the United Nations or by the Memorial Cemetery Commission referred to above, title shall vest in the Republic of Korea which shall permanently maintain the Cemetery in a suitable and dignified manner.

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(3) Should the land cease altogether to be used as a Memorial Cemetery and all graves be removed, full and complete title shall revert to the Republic of Korea.

ARTICLE X

The use and maintenance of the Memorial Cemetery shall be regulated solely by the provisions of this Agreement and by such other provisions as may be made by the United Nations consistent with this Agreement or as may be brought into effect by supplemental agreement between the United Nations and the Republic of Korea. Amendments or revisions of this Agreement shall be made by agreement of the United Nations and the Republic of Korea.

ARTICLE XI

(1) This Agreement shall be signed by the Secretary-General on behalf of the United Nations and by a duly appointed representative of the Government of the Republic of Korea on behalf of the Republic of Korea.

(2) This Agreement shall enter into force on the date upon which the Secretary-General is notified by the Government of the Republic of Korea of the ratification of this Agreement.

Done in duplicate in the English language.

For the United Nations:

DAG HAMMARSKJOLD

at the United Nations Headquarters,
New York, on this sixth day
of November 1959.

For the Republic of Korea:

CHUNG W. CHO

at the United Nations Headquarters,
New York, on this sixth day
of November 1959.