

No. 31867

**NEW ZEALAND
and
FIJI**

**Exchange of letters constituting an agreement concerning the
visit of a New Zealand defence force contingent to Fiji for
Exercise TROPIC ASTRA 94. Suva, 4 July 1994**

Authentic text: English.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
FIDJI**

**Échange de lettres constituant un accord relatif à la visite
d'un contingent des forces de défense néo-zélandaises
aux Fidji pour l'Exercice TROPIC ASTRA 94. Suva,
4 juillet 1994**

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 1^{er} juin 1995.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN NEW ZEALAND AND FIJI CONCERNING THE VISIT OF A NEW ZEALAND DEFENCE FORCE CONTINGENT TO FIJI FOR EXERCISE TROPIC ASTRA 94

I

NEW ZEALAND EMBASSY
SUVA, FIJI

4 July 1994

Hon Mr Berenado Vunibobo
Minister for Home Affairs and Immigration
SUVA

Sir

I have the honour to refer to the talks held between officials from New Zealand and the Republic of Fiji in May 1994 concerning the visit of a New Zealand Defence Force contingent to the Republic of Fiji for Exercise TROPIC ASTRA 94, to be held between 4-16 July 1994. The purposes of the exercise are to provide Royal New Zealand Air Force (RNZAF) personnel with experience in tactical transport and helicopter operations in a tropical environment, to provide communications personnel with remote area communications experience, to provide training assistance to the Republic of Fiji Military Forces (RFMF), and to carry out civil assistance tasks.

I now propose on behalf of the Government of New Zealand that agreement be reached between our two Governments relating to this exercise, on the following terms:

1. The Government of New Zealand shall send a contingent of 100 RNZAF personnel, three Iroquois helicopters, and two Andover aircraft to the Republic of Fiji from 4-16 July 1994 to take part in Exercise TROPIC ASTRA 94. The contingent shall deploy to and from the Republic of Fiji by

¹ Came into force on 4 July 1994, the date of the letter in reply, in accordance with the provisions of the said letters.

RNZAF Hercules and Andover aircraft. One Air Liaison Officer shall arrive on 29 June, while the main body shall arrive on 4 July 1994. The contingent shall include a 15-man team to conduct field communications training, and a two-man Physical Training Instructor (PTI) team to conduct tropical survival training.

2. For the purposes of this Agreement and unless the context otherwise requires, the terms set out below shall have the following meanings:

- a. "New Zealand contingent" means that group of New Zealand Servicemen who will be visiting the Republic of Fiji for the purpose of taking part in Exercise TROPIC ASTRA 94 in the Republic of Fiji.
- b. "New Zealand Serviceman" means an individual member of the New Zealand contingent.
- c. "New Zealand Service authorities" means the authorities empowered by the law of New Zealand to exercise command and jurisdiction over members of the New Zealand contingent while they are participating in Exercise TROPIC ASTRA 94.

3. The New Zealand contingent taking part in Exercise TROPIC ASTRA 94 shall be permitted to conduct exercise activities as follows:

- a. Establish a base camp at Nadi airport.
- b. Conduct helicopter training operation on Vitu Levu, Vanua Levu, and other islands as may be approved by the Republic of Fiji authorities.
- c. Conduct tactical operations training in conjunction with RFMF platoon or company groups in the Namosi area.
- d. Conduct tactical transport training operations with Andover aircraft on Vitu Levu, Vanua Levu, Taveuni Island, the Lau Island Group, and other islands as may be approved by the Republic of Fiji authorities.
- e. Conduct survival training for aircrew and communications personnel on Viti Levu, or in another such area as may be mutually agreed for the purpose.
- f. Conduct winch training with the RFMF Naval Division.
- g. Conduct field communications training from a number of mutually agreed remote sites on Viti Levu, Rabi and Kadavu islands.

4. The New Zealand contingent shall provide helicopter and fixed-wing flying support for civil assistance activities and projects. These mutually agreed activities shall be detailed separately, but shall include the following:

- a. Assistance to RFMF engineers and the Rural Development Department with the movement of building materials to remote areas of Viti Levu, Vanua Levu, and other such areas as may be mutually agreed.
- b. Any such assistance as agreed between the New Zealand Service authorities and the Republic of Fiji Government.

5. The Government of the Republic of Fiji shall:

- a. allow the New Zealand contingent to use Nadi Airport and adjacent areas for the exercise base camp for up to 100 personnel;
- b. permit the New Zealand contingent to use the water supply, electricity, and refuse disposal facilities at Nadi Airport, as agreed between Nadi Airport authorities and the RNZAF;
- c. permit the New Zealand contingent to dig ablution pits and swill pits at the base camp;
- d. permit the establishment of a rebroadcast link between the base camp and aircraft exercising in the Republic of Fiji area; and
- e. provide the use of emergency medical services at the Nadi airport dispensary.

6. The Republic of Fiji authorities shall not levy landing charges against the Government of New Zealand for the use of airport facilities in connection with Exercise TROPIC ASTRA 94.

7. The Republic of Fiji authorities shall facilitate the entry of the New Zealand contingent into the Republic of Fiji by not requiring passports of its members. The following documents shall, however, be required for entry into the Republic of Fiji:

- a. a personal identity card issued by the appropriate authority of the Government of New Zealand showing the full name, date of birth, rank and number, Service and photograph of the holder; and

b. an individual or collective movement order issued by an appropriate authority and certifying the status of the individual or group as a member of the New Zealand contingent.

8. All freight, exercise stores and equipment required by the New Zealand contingent for the exercise shall be given entry free of all duties and taxes by the Republic of Fiji authorities provided that a detailed list of New Zealand freight, stores and equipment is forwarded to the Republic of Fiji authorities.

9. The New Zealand contingent shall be permitted to take with it upon departure all equipment brought by it into the Republic of Fiji for the purpose of Exercise TROPIC ASTRA 94 free from export duties and related charges and restrictions.

10. New Zealand Servicemen shall be entitled to use valid New Zealand drivers' licences whilst driving in the Republic of Fiji during Exercise TROPIC ASTRA 94.

11. The New Zealand contingent shall provide their own 24 hour ration packs which shall comply with the agricultural requirements of the Republic of Fiji.

12. For the purpose of the command and control of members of the New Zealand contingent, for exercise purposes and communications to New Zealand, the Republic of Fiji authorities shall allow the New Zealand contingent to establish and operate HF, VHF, and UHF radio stations using frequencies approved by the Fiji Government.

13. New Zealand Servicemen shall be permitted to wear uniform while performing official duty in the Republic of Fiji.

14. New Zealand Servicemen shall be permitted to possess and carry arms on condition that they are authorised to do so by their orders and provided that arrangements regarding the carrying of arms outside areas and facilities in use by the visiting contingent have been made between the appropriate authorities of the two Governments. Only blank ammunition and pyrotechnics shall be permitted to be carried and used during the Exercise TROPIC ASTRA 94 and then only during formal periods of training. The Fiji authorities shall make available to the contingent suitable facilities for the storage of blank ammunition and pyrotechnics.

15. The Republic of Fiji authorities shall grant New Zealand Servicemen participating in Exercise TROPIC ASTRA 94 exemption from departure tax.

16. The rights of the two Governments with respect to criminal and disciplinary jurisdiction over the New Zealand contingent participating in Exercise TROPIC ASTRA 94 shall be as follows:

- a. The New Zealand Service authorities shall have the right to exercise within Fiji all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over New Zealand Servicemen, and exclusive jurisdiction over the New Zealand Servicemen with respect to offences punishable by the law of New Zealand but not by the law of the Republic of Fiji.
- b. The Republic of Fiji authorities shall have the right to exercise jurisdiction over New Zealand Servicemen with respect to offences committed in the Republic of Fiji and punishable by the law of the Republic of Fiji and the right to exercise exclusive jurisdiction with respect to offences punishable by the law of the Republic of Fiji but not by the law of New Zealand.
- c. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
 - (1) The New Zealand Service authorities shall have the primary right to exercise jurisdiction over New Zealand Servicemen in relation to:
 - (a) offences solely against the property and security of New Zealand;
 - (b) offences solely against the person or property of another New Zealand Serviceman taking part in Exercise TROPIC ASTRA 94; and
 - (c) offences arising out of any act or omission done in the performance of official duty as a New Zealand Serviceman.
 - (2) In the case of any other offences the Republic of Fiji authorities shall have the primary right to exercise jurisdiction.
 - (3) If the authorities having the primary right to exercise jurisdiction under these rules decide not to exercise jurisdiction they shall notify the other authorities as soon as practicable. The authorities having primary right to exercise jurisdiction shall give consideration to a request from the other authorities for a waiver of jurisdiction.

- (4) The foregoing paragraphs shall not confer any right on New Zealand Service authorities to exercise jurisdiction over persons who are nationals of or ordinary residence in the Republic of Fiji unless they are New Zealand Servicemen.
- d. The New Zealand Service authorities and the Republic of Fiji authorities shall assist each other in the arrest of New Zealand Servicemen taking part in Exercise TROPIC ASTRA 94 where such arrest is necessary to allow the exercise of jurisdiction provided for in the above paragraphs and, subject to paragraphs h and i of this clause, in handing them over to the Government authorities which are to exercise jurisdiction in accordance with the above paragraphs.
- e. The Republic of Fiji authorities shall notify promptly the New Zealand Service authorities of the arrest of any New Zealand Serviceman taking part in Exercise TROPIC ASTRA 94.
- f. Where the Republic of Fiji authorities have arrested a New Zealand Serviceman taking part in Exercise TROPIC ASTRA 94, the Republic of Fiji authorities shall if so requested release him to the custody of the New Zealand Service authorities in the Republic of Fiji pending completion of trial proceedings provided that he shall, on request, be made available to the Republic of Fiji authorities.
- g. The New Zealand Service authorities and the Republic of Fiji authorities shall in all cases, including those giving rise to concurrent jurisdiction, assist each other in carrying out of all necessary investigations into offences and in the collection and production of evidence, including the seizure of an, in appropriate cases, the handing over of objects in connection with an offence. The handing over of such objects, however, may be made subject to their return within any reasonable time specified by the Government delivering them.
- h. The New Zealand Service authorities and the Republic of Fiji authorities shall notify each other of the disposal of all cases in which there are concurrent rights to exercise criminal jurisdiction.
- i. Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service authorities or by the Republic of Fiji court, and has

been convicted or acquitted (which expressions shall include any other final disposal of charge), he may not be tried again for the same offence or substantially the same offence by either Government. This paragraph shall not prevent the New Zealand Service authorities from trying or dealing with a New Zealand Serviceman for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried under the Republic of Fiji law.

- j. In addition to the provision of any agreement entered into between New Zealand and the Republic of Fiji concerning the return of prisoners from one country to another, where a New Zealand Serviceman taking part in Exercise TROPIC ASTRA 94 has been sentenced under the law of the Republic of Fiji to a term of imprisonment and the Serviceman makes a request, which is supported by the Government of New Zealand, that the Serviceman's term of imprisonment be served in New Zealand, the Serviceman's request shall be given sympathetic consideration by the Government of the Republic of Fiji.

17. The two Governments shall consult on the settlement of claims by one against the other arising from loss of, or damage to, property owned or being used by one of them and caused by an act or omission of a member of the armed forces or an employee of the other in the performance of official duty where such damage or loss has occurred in the course of Exercise TROPIC ASTRA 94. Due regard will be had in the settlement of such claims and in the determination of the appropriate compensation payable, to the criteria set out in Clause 17 of this agreement for the settlement of claims against the Government of New Zealand by third parties.

18. The Government of New Zealand shall pay just and reasonable compensation in accordance with the law of the Republic of Fiji for meritorious claims by third parties in respect of loss of life or injury to such third parties, or loss of property or damage to property belonging to such third parties, where such damage or loss is caused by the act or omission (done in the performance of official duty) of a New Zealand Serviceman while in the Republic of Fiji for the purpose of Exercise TROPIC ASTRA 94 and where the Republic of Fiji authorities, after investigation, certifies the claims:

- a. as having been submitted in good faith, within three months of the act or omission;
- b. as being reasonable in nature;

- c. where they relate to property damage, as seeking sums which reflect accurately the current market prices for returning the damaged property to the condition it was in before such damage; and
- d. where they relate to loss of property, as seeking sums which reflect accurately the value of such property immediately prior to such loss.

19. The Government of New Zealand shall take measures to ensure that members of the New Zealand contingent are aware of their duty to observe the laws and regulations of the Republic of Fiji.

20. If the foregoing is acceptable to the Government of the Republic of Fiji, I have the honour to propose that this Letter, together with your reply to that effect, shall constitute an agreement between our two Governments which shall enter into effect on the date of your reply.

Accept, Sir, the renewed assurances of my highest consideration.

D.J. MacKay
Ambassador

II

MINISTRY OF HOME AFFAIRS
SUVA, FIJI

Your reference :

Our reference : C8/23/11

Date : 4 July 1994

His Excellency Mr. Don MacKay
Ambassador
New Zealand Embassy
SUVA.

Dear Ambassador,

I have the honour to acknowledge the receipt of your letter dated 4 July, 1994, which reads as follows:

[See letter I]

I have the honour to confirm that the above proposal is acceptable to the Government of Fiji and that your letter together with this reply shall constitute an Agreement between our two Governments which shall enter into force on the date of this reply.

Accept, Your Excellency, the assurances of my highest consideration.



Berenado Lunibobo, CBE

Minister for Home Affairs and Immigration
