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**NEW ZEALAND
and
SAMOA**

Exchange of notes constituting an agreement concerning the visit of a contingent of the New Zealand Defence Force to Western Samoa for Exercise TROPIC DAWN 91. Apia, 13 September 1991

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**NOUVELLE-ZÉLANDE
et
SAMOA**

Échange de notes constituant un accord relatif à la visite d'un contingent des forces de défense néo-zélandaises au Samoa-Occidental pour l'Opération TROPIC DAWN 91. Apia, 13 septembre 1991

Texte authentique : anglais.

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EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT¹ BETWEEN NEW ZEALAND AND WESTERN SAMOA CONCERNING THE VISIT OF A CONTINGENT OF THE NEW ZEALAND DEFENCE FORCE TO WESTERN SAMOA FOR EXERCISE TROPIC DAWN 91

I

26/5/3

13 September 1991

Mr Mose Sua
Secretary for Foreign Affairs
Ministry of Foreign Affairs
APIA

Sir

I have the honour to refer to the talks held between officials from New Zealand and Western Samoa in May 1991 concerning the visit of a contingent of New Zealand Defence Force to Western Samoa for Exercise TROPIC DAWN 91, to be held between 12 and 29 September 1991. The purpose of the exercise is to give New Zealand service personnel practice in low level operations in a tropical environment, to train the Western Samoa police and to carry out civic aid tasks.

I now propose on behalf of the Government of New Zealand that an agreement be reached between our two governments relating to these exercises on the following terms:

1 The Government of New Zealand will send a contingent of 120 Army personnel to Western Samoa between 12 and 29 September 1991 to take part in Exercise TROPIC DAWN 91. The contingent will deploy to and from Western Samoa by RNZAF Hercules C130 and Boeing 727 aircraft. The contingent will include a six-man training team and a five-man engineer team to carry out civic aid.

¹ Came into force on 13 September 1991, the date of the note in reply, in accordance with the provisions of the said notes.

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

"New Zealand contingent" means that group of New Zealand servicemen who will be visiting Western Samoa for the purpose of taking part in Exercise TROPIC DAWN 91 in Western Samoa.

"New Zealand servicemen" means individual members of the contingent of New Zealand Defence Force who will be visiting Western Samoa for the purpose of taking part in Exercise TROPIC DAWN 91.

"New Zealand Service authorities" means the authorities empowered by the law of New Zealand to exercise command or jurisdiction over members of the New Zealand contingent while they are participating in Exercise TROPIC DAWN 91.

"The Western Samoa authorities" means the authorities from time to time designated by the Government of Western Samoa for the purpose of exercising the powers in relation to which the term is used.

3 The New Zealand contingent taking part in Exercise TROPIC DAWN 91 shall be permitted to:

Company Exercise

- a carry out theatre indoctrination and minor tactics training on Upolu Island prior to the field exercise;
- b carry out a field exercise in low level operations on Savai'i Island which will include the 25 police who have been trained prior to the exercise by the training team;
- c carry out live firing on Savai'i Island on a field firing range properly constituted in full cooperation with local authorities; and
- d travel between Upolu and Savai'i Islands by civilian ferry at no cost to the Western Samoa Government.

Training Team

- a provide instruction to up to 25 members of the Western Samoa Police Force in:
 - (1) basic first aid;

- (2) weapon handling;
- (3) shooting;
- (4) navigation;
- (5) patrolling and fieldcraft; and
- (6) radio telephone procedures.

Civic Aid Team

- a erect a "squatters tank" at the Apia National Hospital;
 - b carry out construction and refurbishment work on the IHC school in Alafua;
 - c paint the Loto Taumafai School for the Disabled in Apia; and
 - d carry out refurbishment work at the Teachers College Science Supply Centre, Apia.
- 4 The Western Samoa Government will:
- a provide up to 25 members of the police force to undertake training prior to the company exercise;
 - b provide the same 25 policemen to take part in the company exercise;
 - c provide 6 policemen for local security at Faleolo Airport and a police liaison officer whilst the contingent is on Savai'i Island;
 - d provide the training team a lecture room at HQ Central Police Station and the 100m rifle range at Apia;
 - e provide the use of emergency medical services at Apia National Hospital;
 - f provide Apia Stadium at no cost to New Zealand for the contingent Open Day on 27 September 1991;
 - g allow the use of the Public Works Department Workshop at Apia for repair of contingent equipment during the deployment;
 - h assist the contingent with the embarking and disembarking of the troops on deployment to and from Savai'i Island;

- i allow the New Zealand contingent to use Faleolo Airport and adjacent areas for the exercise base camp for up to 120 personnel; and
- j permit the New Zealand contingent to use electricity, water supply and refuse disposal facilities at Faleolo Airport and to dig ablution pits and swill pits at the base camp.

5 The New Zealand contingent shall supply rations and ammunition for Western Samoa Police Force personnel taking part in the field exercise. New Zealand will provide ammunition only to the police during the work-up training.

6 The Government of New Zealand will not be responsible for the movement of the police to and from Puapua, Savai'i Island.

7 The Government of Western Samoa shall not levy landing charges against the Government of New Zealand for the use of airport facilities in connection with Exercise TROPIC DAWN 91.

8 The Government of Western Samoa shall facilitate the entry of the New Zealand contingent into Western Samoa by not requiring passports of its members. The following documents shall, however, be required for entry into Western Samoa:

- 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;
- 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 a New Zealand contingent.

9 All freight and 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 Government of Western Samoa provided that a detailed list of New Zealand stores and equipment is forwarded to the Government of Western Samoa. The New Zealand contingent shall provide to the Government of Western Samoa a list of weapons by type and serial number prior to the commencement of Exercise TROPIC DAWN 91.

10 The New Zealand contingent shall be permitted to take with it upon departure all equipment brought by it into Western Samoa for the purpose of Exercise TROPIC DAWN 91 free from export duties and related charges and restrictions.

11 The Government of Western Samoa shall allow the New Zealand High Commission, should it be willing to do so, to supply to the contingent duty free alcohol for use at the final function.

12 New Zealand servicemen shall be entitled to use valid New Zealand drivers' licences and New Zealand Army drivers' licences.

13 The New Zealand contingent shall provide their own 24 hour ration packs which shall comply with the agricultural requirements of Western Samoa.

14 For the purpose of the command and control of members of the New Zealand contingent and for exercise purposes, the Government of Western Samoa shall allow the New Zealand contingent to establish and operate HF and VHF radio stations using frequencies approved by the Western Samoa Government.

15 New Zealand servicemen shall be permitted to wear uniform while performing official duty in Western Samoa.

16 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. The Government of Western Samoa shall make available to the contingent suitable facilities for the storage of live and blank ammunition.

17 The Government of Western Samoa shall grant New Zealand servicemen exemption from departure tax.

18 The rights of the two Governments with respect to criminal and disciplinary jurisdiction over the New Zealand contingent participating in Exercise TROPIC DAWN 91 shall be as follows:

a The New Zealand Service authorities shall have the right to exercise within Western Samoa 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 Western Samoa.

b The Western Samoa authorities shall have the right to exercise jurisdiction over New Zealand servicemen with respect to offences committed in

Western Samoa and punishable by the law of Western Samoa and the right to exercise exclusive jurisdiction with respect to offences punishable by the law of Western Samoa 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:

i) offences solely against the property and security of New Zealand;

ii) offences solely against the person or property of another New Zealand serviceman;

iii) offences arising out of any act or omission done in the performance of an official duty as a New Zealand serviceman.

(2) In the case of any other offences the Western Samoa 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 sympathetic 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 ordinarily resident in Western Samoa unless they are New Zealand servicemen.

d The New Zealand Service authorities and the Government of Western Samoa shall assist each other in the arrest of New Zealand servicemen where such arrest is necessary to allow the exercise of jurisdiction provided for in the above subparagraphs and, subject to subparagraphs h and i

of this clause, in handing them over to the authorities which are to exercise jurisdiction in accordance with the above paragraphs.

- e The Government of Western Samoa shall notify promptly the New Zealand Service authorities of the arrest of any New Zealand serviceman.
- f Where the Western Samoa authorities have arrested a New Zealand serviceman taking part in Exercise TROPIC DAWN 91, the Government of Western Samoa shall if so requested release him to the custody of the New Zealand Service authorities in Western Samoa pending completion of trial proceedings provided that he shall, on request, be made available to the the Western Samoa authorities.
- g The New Zealand Service authorities and Western Samoa authorities shall in all cases, including those giving rise to concurrent jurisdiction, assist each other in the carrying out of all necessary investigations into offences and in the collection and production of evidence, including the seizure of and, 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 authorities authorising their delivery.
- h The New Zealand Service authorities and Western Samoa 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 serviceman has been tried or summarily dealt with in accordance with the preceding paragraphs by the New Zealand Service authorities or in a Western Samoa Court and has been convicted or acquitted (which expressions shall include any other final disposal of a charge), he may not be tried or summarily dealt with again for the same or substantially the same offence under New Zealand or Western Samoa law. 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 Western Samoa law.
- j Where a New Zealand serviceman has been sentenced under the law of Western Samoa to a term of

imprisonment and makes a request, which is supported by the Government of New Zealand, that his term of imprisonment be served in New Zealand, the Government of Western Samoa shall give sympathetic consideration to the request. This situation shall apply regardless of any agreement entered into by the two Governments on the return of prisoners from one country to the other.

19 Claims

a 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 on Exercise TROPIC DAWN 91. In the settlement of such claims, regard shall be had to the criteria set out in subparagraph b of this clause for the settlement of claims against the Government of New Zealand by third parties.

b The Government of New Zealand shall pay just and reasonable compensation in accordance with the law of Western Samoa 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 or servicemen and where the Government of Western Samoa, after investigation, certifies the claims:

- (1) as having been submitted in good faith, within three months of the act or omission;
- (2) as being reasonable in nature;
- (3) 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
- (4) where they relate to loss of property, as seeking sums which reflect accurately the value of such property immediately prior to such loss.

20 The Government of New Zealand shall take measures to ensure that members of the visiting contingent are aware of their duty to observe the law of Western Samoa.

21 All references to "serviceman" or "servicemen" in this agreement shall include personnel of both male and female gender.

If the foregoing is acceptable to the Government of Western Samoa, I have the honour to propose that this Note, 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.

High Commissioner

II

13 September 1991

His Excellency Adrian Simcock
High Commissioner
New Zealand High Commission
APIA

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note dated 13 September 1991 which reads as follows:

[See note I]

I have the honour to confirm that the foregoing is acceptable to the Government of Western Samoa and that your Note and this reply shall constitute an Agreement between our two Governments with effect from the date of this reply.

I avail myself of this opportunity to extend to Your Excellency the assurances of my highest consideration.



Mose Sua
Mose Sua

SECRETARY FOR FOREIGN AFFAIRS
Ministry of Foreign Affairs,

A P I A