

No. 31869

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**NEW ZEALAND  
and  
COOK ISLANDS**

**Exchange of letters constituting an agreement on arrangements for visits by elements of the New Zealand Armed Forces. Rarotonga, 3 August 1993**

*Authentic text: English.*

*Registered by New Zealand on 1 June 1995.*

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**NOUVELLE-ZÉLANDE  
et  
ÎLES COOK**

**Échange de lettres constituant un accord relatif aux arrangements en vue de visites d'unités des Forces armées néo-zélandaises. Rarotonga, 3 août 1993**

*Texte authentique : anglais.*

*Enregistré par la Nouvelle-Zélande le 1<sup>er</sup> juin 1995.*

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT<sup>1</sup>  
BETWEEN NEW ZEALAND AND THE COOK ISLANDS ON  
ARRANGEMENTS FOR VISITS BY ELEMENTS OF THE NEW  
ZEALAND ARMED FORCES

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RAROTONGA

3 August 1993

Hon Sir Geoffrey Henry, KBE  
Prime Minister of the Cook Islands

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN  
THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE  
COOK ISLANDS ON ARRANGEMENTS FOR VISITS BY  
ELEMENTS OF THE NEW ZEALAND ARMED FORCES

Dear Sir Geoffrey

I have the honour to refer to discussions between our two Governments concerning the conclusion of arrangements in respect of visits by elements of the New Zealand Armed Forces to the Cook Islands. I now have the honour to propose on behalf of the Government of New Zealand that an agreement be reached between our two Governments, on the terms set out below, regarding the status of New Zealand Service personnel, and their civilian component, temporarily present in the Cook Islands in connection with their official duties.

DEFINITIONS

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

'New Zealand Armed Forces' means the New Zealand Naval Forces (which includes the Royal New Zealand Navy) the New Zealand Army and Royal New Zealand Air Force. The

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<sup>1</sup> Came into force on 3 August 1993, the date of the letter in reply, in accordance with the provisions of the said letters.

abbreviations 'RNZN' and 'RNZAF' will be used for the Royal New Zealand Navy and Royal New Zealand Air Force respectively.

'Members of the New Zealand Armed Forces' means individual members of the New Zealand Armed Forces present in the Cook Islands from time to time in connection with their official duties; and includes members of armed forces in other countries who as individuals are exercising with, or attached to, one of the Services of the New Zealand Armed Forces.

'Service', when used in relation to the New Zealand Armed Forces, means the New Zealand Naval Forces, Army or Air Force.

'New Zealand Service element' means any group of New Zealand Service personnel present in the Cook Islands from time to time in connection with their official duties.

'New Zealand Service authorities' means the authorities empowered by the law of New Zealand to exercise command or jurisdiction over members of New Zealand Service elements and, as the case may be, members of their civilian component.

'Civilian component' means civilian personnel in the Cook Islands who, not being nationals of, nor persons ordinarily resident, in the Cook Islands:

- a. are employed by or in the service of a New Zealand Service element; or
- b. are serving with an organisation that with the consent of the Cook Islands Government is accompanying a New Zealand Service element; or
- c. are assigned for employment with or are accompanying members of the New Zealand Armed Forces and in accordance with the law of New Zealand are subject to the Service law of New Zealand.

#### RESPECT FOR LAW

2. It is the duty of members of the New Zealand Armed Forces and their civilian component to respect the law of the Cook Islands. New Zealand Service authorities shall take necessary measures to ensure that members of the New Zealand Armed Forces and their civilian component are aware of that duty.

### REGARD FOR CUSTOMS

3. The Cook Islands Government shall inform the New Zealand Service authorities of Cook Islands customs to which the members of the New Zealand Armed Forces and their civilian component should have regard. The New Zealand Service authorities shall ensure that the latter are informed accordingly.

### PRESENCE IN THE COOK ISLANDS

4. The New Zealand Government shall seek written permission in advance through the diplomatic channel from the Cook Islands Government for the presence in the Cook Islands of any New Zealand Service elements and civilian components. The nature, purpose, size and intended duration of any such presence shall be as agreed upon from time to time. In reaching agreement on any civilian component to be present in the Cook Islands, the New Zealand Government shall indicate to the Cook Islands Government which members of the civilian component would not be subject to the Service law of New Zealand.

### EXERCISE AREAS

5. Subject to agreement in advance from time to time between the Governments of New Zealand and the Cook Islands, members of the New Zealand Armed Forces and their civilian component may use for training defined land and sea areas, air space and facilities relating to them. Such agreement may include measures to be taken to restrict civilian movement and activity in the areas or airspace concerned.

### FLAGS

6. Wherever the flag of New Zealand is flown at premises occupied by a New Zealand Service element, the flag of the Cook Islands shall be flown on a separate and adjacent flagstaff.

### ENTRY AND EXIT

7. The Government of the Cook Islands shall facilitate the admission to, and exit from, the Cook Islands of members of the New Zealand Armed Forces and their civilian component.

8. Members of the New Zealand Armed Forces shall be exempt from passport and visa requirements upon entering and leaving the Cook Islands. They shall, however, require the following documents for entry and exit:
  - 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 to the status of the person or persons covered by it; and
  - c. such documents conforming to standards approved by the World Health Organisation as may be issued by the appropriate authorities of New Zealand in satisfaction of national health and quarantine regulations of the Cook Islands.
9. Members of the civilian component shall be required to be in possession of a valid passport and either a visa issued by Cook Islands authorities or a certificate issued by the appropriate New Zealand authority that the holder is a member of the civilian component. Such a certificate shall serve in lieu of a visa when travel is undertaken under the authority of a movement order.
10. Passports and visas shall be required by members of the New Zealand Armed Forces and the civilian component for exit and entry purposes when travelling out of or into the Cook Islands other than on official duty under the authority of a movement order.

#### SERVICE PROPERTY

11. All freight and exercise stores and equipment required by a New Zealand Service element in connection with its presence in the Cook Islands shall be given entry to the Cook Islands free of all duties and taxes by the Government of the Cook Islands, provided that a detailed list of New Zealand stores and equipment is forwarded to the Government of the Cook Islands in advance of the visit or deployment of New Zealand Service element. The New Zealand Service authorities shall also provide to the Government of the Cook Islands a list of weapons, by type and serial number, landed in the Cook Islands in connection with the presence of the New Zealand Service element.

12. Each New Zealand Service element shall be permitted to take with it upon departure all equipment brought by it into the Cook Islands in connection with its official duty, free from export duties and related charges and restrictions. No property brought into the Cook Islands in relation to the presence in the Cook Islands of a New Zealand Service element or a civilian component may be disposed of in the Cook Islands except under such conditions as may be agreed upon in writing by Cook Islands authorities.

#### PERSONAL PROPERTY

13. Baggage, personal effects and other property (other than motor vehicles and cigarettes, cigars, tobacco and spirituous liquors in excess of the normal duty-free allowance permitted other persons arriving in the Cook Islands) for the personal use of members of the New Zealand Armed Forces or their civilian component may be imported into the Cook Islands at the time of first arrival of such members, and used in the Cook Islands free of all duties, taxes and other charges during the period of their service in the Cook Islands. The transfer of such property to persons or entities in the Cook Islands other than members of the New Zealand Armed Forces or their civilian component shall be subject to the payment of applicable duties or taxes unless otherwise agreed by the Cook Islands Government. The exportation of such property and of property acquired in the Cook Islands by members of the New Zealand Armed Forces or their civilian component for their personal use shall be free of all Cook Islands duties, taxes and other charges.

#### SERVICES AND FACILITIES

14. A New Zealand Service element may use the public services and facilities owned, controlled or regulated by the Government of the Cook Islands or its instrumentalities. The terms of use, including charges, shall be no less favourable than those available to other users in like circumstances unless otherwise agreed.
15. No toll charges, including jetty, lighter and harbour dues, shall be levied upon RNZN vessels which are using port facilities owned, controlled or regulated by the Government of the Cook Islands. Such vessels shall not be liable to compulsory pilotage at these ports. The movement of such vessels shall, however,

be in accordance with all port laws and regulations of the Cook Islands.

16. The Government of the Cook Islands shall not levy landing charges against the Government of New Zealand for the use by RNZAF aircraft of any airport in the Cook Islands. Such aircraft shall observe Cook Islands law relating to air traffic control while in the Cook Islands.
17. RNZN vessels and RNZAF aircraft shall be exempt from any form of registration, licensing, compulsory testing or taxation in respect of their use in the Cook Islands; this exemption shall not apply however where such vessels or aircraft have been hired or chartered from within the Cook Islands.
18. For the purposes of clauses 15 to 17 of this Agreement, a vessel or aircraft on hire or charter to the Government of New Zealand shall, for the period that it is used exclusively by the RNZN or RNZAF, be deemed to be a RNZN vessel or RNZAF aircraft, as the case may be.

#### DRIVING LICENSES AND VEHICLE REGISTRATION

19. The Cook Islands authorities shall accept as valid, without a driving test or fee, a driving licence issued by the appropriate New Zealand authorities to members of the New Zealand Armed Forces or civilian component for the operation of military or official vehicles. For the purpose of driving vehicles other than official vehicles, a driving licence issued by Cook Islands authorities shall be obtained and the appropriate fee paid. Vehicles owned by New Zealand shall not be required to be registered, but shall have appropriate identification markings.

#### COMMUNICATIONS

20. For the purpose of the command and control of a New Zealand Service element in the Cook Islands, the Cook Islands Government shall allow that element to use radio communications, and to link them with such other radio systems or terminals within the Cook Islands, under such conditions as may be agreed between the Governments of New Zealand and the Cook Islands. Communications for any other purpose shall be transmitted by the public telecommunications services of the Cook Islands at the charges applicable to the public for equivalent transmissions.

21. Radio frequencies required by the New Zealand Service element shall be as assigned and registered by the competent authority for the Cook Islands Government, and the New Zealand Government shall be responsible to the competent authority for the use of such frequencies and for the powers of emission of its radio systems in the Cook Islands. Where New Zealand Service element communications equipment is operated otherwise than in accordance with approved arrangements by reason of equipment malfunction, the element shall, at the request of Cook Islands authorities, suspend the operation of the equipment until the malfunction is corrected.

#### UNIFORMS

22. Members of the New Zealand Armed Forces shall be permitted to wear their Service uniforms when performing official duties in the Cook Islands.

#### CARRIAGE OF ARMS

23. Members of the New Zealand Armed Forces shall be permitted, when in the Cook Islands on duty, to possess and carry arms provided that:
- a. they are authorised to do so by their orders; and
  - b. arrangements regarding the carrying of arms outside areas and facilities used by a New Zealand Service element have been agreed by the Governments of New Zealand and the Cook Islands.

#### CRIMINAL AND DISCIPLINARY JURISDICTION

24. The rights of New Zealand and Cook Islands Governments with respect to criminal and disciplinary jurisdiction over New Zealand personnel (which for the purposes of this clause shall mean members of the New Zealand Armed Forces and members of the civilian component subject to the Service law of New Zealand) shall be as follows:
- a. The New Zealand Service authorities shall have the right to exercise within the Cook Islands all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over New Zealand personnel.



- b. Cook Islands authorities shall have jurisdiction over all New Zealand personnel with respect to offences committed within the Cook Islands and punishable by the law of the Cook Islands.
- c. The New Zealand Services authorities shall have the right to exercise exclusive jurisdiction over New Zealand personnel with respect to offences punishable by the law of New Zealand but not by the law of the Cook Islands.
- d. Cook Islands authorities shall have the right to exercise exclusive jurisdiction over all New Zealand personnel with respect to offences punishable by the law of the Cook Islands but not by the law of New Zealand.
- e. In the 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 personnel in relation to:
    - (a) offences solely against the property or security of New Zealand;
    - (b) offences solely against the person or property of one of the New Zealand personnel; or
    - (c) offences arising out of any act or omission done in the performance of official duty.
  - (2) In the case of any other offence, Cook Islands authorities shall have the primary right to exercise jurisdiction.
  - (3) (a) When one of the New Zealand personnel is charged with an offence by the Cook Islands authorities, the New Zealand Service authorities shall, if appropriate, issue a certificate verifying that the alleged offence arose out of an act or omission done in the performance of official duty, in which case the New Zealand Service authorities shall retain the primary right to exercise jurisdiction. That certificate shall be sufficient proof of such fact

for the purpose of this clause, without prejudice to the provisions of sub-clause (b) immediately following;

- (b) In exceptional cases, where the Cook Islands authorities ask the New Zealand authorities for a reconsideration of whether the alleged offence arose out of an act or omission done in the performance of official duty, the New Zealand Service authorities shall review their decision at the highest level. Where necessary, the New Zealand and Cook Islands Governments may decide to review the matter through the diplomatic channel. Any such reviews shall be conducted expeditiously.
  - (4) If the Government having the primary right under this clause decides not to exercise jurisdiction, it shall notify the authorities of the other Government as soon as practicable. The authorities having the primary right to exercise jurisdiction shall give sympathetic consideration to a request from the other authorities for a waiver of jurisdiction.
  - (5) Where New Zealand Service authorities exercise their right of primary criminal jurisdiction under this Agreement the resultant legal proceedings, if held in the Cook Islands, shall be open to the public unless the officer hearing the case decides otherwise in the interests of justice, public decency, defence or security. In the latter event, the New Zealand Service authorities shall ensure that the Cook Islands Government is informed of the result of the case and the reasons for it.
  - (6) The above paragraphs shall not confer on the New Zealand Service authorities any right to exercise jurisdiction over persons who are ordinarily resident in the Cook Islands unless they are New Zealand personnel.
- f. The New Zealand Service authorities and the Cook Islands authorities shall assist each other in the arrest of New Zealand personnel and, subject to paragraphs g. and h. of this clause, in handing them over to the authorities who are to

exercise jurisdiction in accordance with the above paragraphs.

- g. The Cook Islands authorities shall promptly notify the New Zealand Service authorities of the arrest of any New Zealand personnel.
- h. (1) Where the Cook Islands authorities have arrested one of the New Zealand personnel with respect to an offence over which the New Zealand Service authorities and Cook Islands authorities have concurrent jurisdiction, the latter authorities shall, if so requested, release that person to the custody of the New Zealand Service authorities in the Cook Islands pending completion of court proceedings, provided that the New Zealand Service authorities shall, upon the request of the Cook Islands authorities and without delay, make that person available to the latter authorities for the purpose of any investigative or judicial proceedings relating to the offence with which the person has been charged.  
  
(2) In all other cases where Cook Islands authorities have arrested one of the New Zealand personnel, the Cook Islands authorities shall give sympathetic consideration to a request by the New Zealand Service authorities that he be released to the latter authorities under the same conditions as those stated in sub-paragraph (1) immediately above.
- i. The New Zealand Service authorities and the Cook Islands 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 shall co-operate in providing for the attendance of witnesses 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, shall be made subject to their return within any reasonable time specified by the authorities delivering them.
- j. The New Zealand Service authorities and the Cook Islands authorities shall notify each other of the disposal of all cases in which there are

concurrent rights to exercise criminal jurisdiction.

- k. Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service authorities or by Cook Islands authorities, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge), he or she shall not be tried again for the same or substantially the same offence by the authorities of either the New Zealand or Cook Islands Government. This paragraph shall not, however, prevent the New Zealand Service authorities from trying one of the New Zealand personnel for any violation of rules of discipline arising from an act or omission which constituted an offence for which the person was tried by Cook Islands authorities.
- l. A death sentence shall not be carried out in the Cook Islands on a member of the New Zealand Armed Forces or a member of the civilian component by either the New Zealand Service authorities or the Cook Islands authorities.
- m. In addition to the provision of any agreement entered into between New Zealand and the Cook Islands concerning the return of prisoners from one country to the other, where a member of the New Zealand Armed Forces or a member of the civilian component has been sentenced under the law of the Cook Islands to a term of imprisonment and makes a request, which is supported by the Government of New Zealand, that the term of imprisonment be served in New Zealand, that request shall be put to the Government of the Cook Islands for sympathetic consideration.
25. Whenever a member of the New Zealand Armed Forces or the civilian component is prosecuted by the Cook Islands authorities pursuant to this Agreement, he shall be entitled to:
- (a) a prompt and speedy trial;
  - (b) be informed, in advance of trial, of the specific charge or charges to be made against him;
  - (c) be confronted with the witnesses against him;
  - (d) have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of the Cook Islands;
  - (e) have legal representation of his own choice for his defence;

- (f) have the services of a competent interpreter, if necessary; and
- (g) communicate with a representative of New Zealand and, where the rules of the court permit, to have such a representative at his trial.

#### CLAIMS

26. The Governments of New Zealand and the Cook Islands shall consult on the settlement of claims against the other arising from the loss of, or damage to, property located in the Cook Islands belonging to, hired or chartered by either of them and used by the New Zealand Armed Forces or their civilian component or the Government of the Cook Islands, and caused by an act or omission of a member of the New Zealand Armed Forces or their civilian component or an employee of the Government of the Cook Islands. In such a case due regard shall be had to the criteria set out in clause 27 of this Agreement for the settlement of claims against the Government of New Zealand by third parties. For the purpose of the settlement of claims, the term Government of the Cook Islands shall include a political sub-division, statutory authority or instrumentality thereof.
27. a. The Government of New Zealand shall pay just and reasonable compensation in accordance with the law of the Cook Islands 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 loss of life, injury, loss or damage is caused by the act or omission (done in the performance of official duty) of a member of the New Zealand Armed Forces or their civilian component, or results from any other act, omission, occurrence otherwise incidental to the activities of the New Zealand Armed Forces for which the Government of New Zealand is legally responsible and where the Cook Islands Government, after investigation, certifies the claims:
- (1) as having been submitted in good faith, within six months of the act or omission;
  - (2) as being reasonable in nature; and
  - (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.

- b. The two Governments shall consult in the event of any claim coming to the attention of the Cook Islands Government after the expiration of the period referred to in paragraph a.(1) of this clause.

#### CONSULTATION

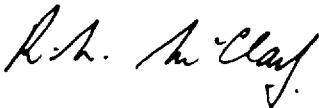
28. Any matter arising under this Agreement with respect to its interpretation, application or implementation shall be settled by consultation or negotiation between the Governments of New Zealand and the Cook Islands.

#### TERMINATION

29. This Agreement shall remain in force until the expiration of 180 days from the date on which either Government gives to the other Government notice, in writing, that it desires to terminate the Agreement.

If the above is acceptable to the Government of the Cook Islands, 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 force on the date of your reply.

Accept, Sir, the assurances of my highest consideration.



Hon Roger McClay  
Associate Minister of Pacific Island Affairs

## II

OFFICE OF THE PRIME MINISTER

RAROTONGA, COOK ISLANDS

3 August 1993

Hon Roger McClay  
Associate Minister of Pacific Island Affairs of New Zealand

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN  
THE GOVERNMENT OF THE COOK ISLANDS AND THE GOVERNMENT  
OF NEW ZEALAND ON ARRANGEMENTS FOR VISITS BY  
ELEMENTS OF THE NEW ZEALAND ARMED FORCES

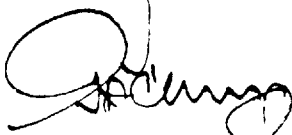
Dear Mr McClay

I have the honour to refer to your letter of 3 August 1993 which reads as follows:

[See letter I]

I have the honour to confirm that the above is acceptable to the Government of the Cook Islands and that, accordingly, your letter, together with this reply, shall constitute an Agreement between our two Governments which shall enter into force on today's date.

Accept, Sir, the assurances of my highest consideration.



Hon Sir Geoffrey Henry, KBE  
Prime Minister of the Cook Islands