

No. 31862

**NEW ZEALAND
and
VANUATU**

Exchange of letters constituting an agreement regarding the arrangements for Exercise TROPIC MERCURY 90 to be held from 15 September to 3 October 1990. Port Vila, Vanuatu, 28 August 1990

Authentic text: English.

Registered by New Zealand on 1 June 1995.

**NOUVELLE-ZÉLANDE
et
VANUATU**

Échange de lettres constituant un accord relatif aux arrangements en vue de l'Opération TROPIC MERCURY 90 devant avoir lieu du 15 septembre au 3 octobre 1990. Port Vila (Vanuatu), 28 août 1990

Texte authentique : anglais.

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

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹ BETWEEN NEW ZEALAND AND VANUATU REGARDING THE ARRANGEMENTS FOR EXERCISE TROPIC MERCURY 90 TO BE HELD FROM 15 SEPTEMBER TO 3 OCTOBER 1990

I

NEW ZEALAND HIGH COMMISSION
PORT VILA

Port Vila
Vanuatu

28 August 1990

Excellency

I have the honour to refer to the talks between officials from New Zealand and Vanuatu in June 1990 concerning the visit of a contingent of the New Zealand Armed Forces to Vanuatu for Exercise TROPIC MERCURY 90 to be held 15 September to 3 October 1990. The purpose of the exercise is to give New Zealand Service personnel practice in communication techniques and experience in a tropical environment, and to provide signals training to members of the Vanuatu Mobile Force as requested by the Government of Vanuatu.

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

1. The Government of New Zealand will send a contingent of up to 90 Army personnel to Vanuatu between 15 September and 3 October 1990 to take part in Exercise TROPIC MERCURY 90. The contingent will include a public relations officer. The contingent will deploy to and from Vanuatu by RNZAF Hercules aircraft.

¹ Came into force on 28 August 1990, the date of the letter in reply, in accordance with the provisions of the said letters.

2. For the purposes of the 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 Vanuatu for the purpose of taking part in Exercise TROPIC MERCURY 90 in Vanuatu.

"New Zealand servicemen" means individual members of the contingent of the New Zealand Armed Forces who will be visiting Vanuatu for the purpose of taking part in Exercise Tropic MERCURY 90.

"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 MERCURY 90.

3. The New Zealand contingent taking part in TROPIC MERCURY 90, shall be permitted to:

- a. conduct HF communication techniques on Santo.
- b. conduct communications in close country on Santo.
- c. conduct infantry minor tactics and survival training on Santo.
- d. conduct basic signal training for 15 members of the Vanuatu Mobile Force on Santo.
- e. use the old British Camp at Luganville as a base and transit camp.

4. The Vanuatu Government shall make available 25 Vanuatu Mobile Force Personnel to assist and exercise with the New Zealand contingent during Exercise TROPIC MERCURY 90. The New Zealand contingent taking part in Exercise TROPIC MERCURY 90 shall supply rations and blank ammunition for Vanuatu Mobile Force personnel.

5. The Government of New Zealand shall facilitate the movement to and from Vila of those VMF personnel taking part in Exercise TROPIC MERCURY 90.

6. The Government of Vanuatu shall not levy landing charges against the Government of New Zealand for the use of airport facilities in Vanuatu in connection with Exercise TROPIC MERCURY 90.

- 7 a. The Government of Vanuatu shall facilitate the admission of the New Zealand contingents for the purpose of taking part in Exercise TROPIC MERCURY 90.
- b. The following documents shall be required to be in the possession of members of the New Zealand contingent for entry into Vanuatu for purposes of taking part in Exercise TROPIC MERCURY 90:
- (1) 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;
 - (2) an individual or collective movement order issued by an appropriate authority and certifying to the status of the individual or group as a member of a New Zealand contingent.
- c. Passports shall not be required by members of a New Zealand contingent for entry into Vanuatu for the purpose of taking part in Exercise TROPIC MERCURY 90.
8. All freight and exercise stores and equipment required by a New Zealand contingent for purposes of the exercise in which it is participating shall be given entry free of all duties and taxes by the Government of Vanuatu provided that a detailed list of New Zealand stores and equipment is forwarded to the Government of Vanuatu in advance of the exercise. The New Zealand contingent participating in Exercise TROPIC MERCURY 90 shall also provide to the Government of Vanuatu a list of weapons by type and serial number.
9. Each New Zealand contingent shall be permitted to take with it upon departure all equipment brought by it into Vanuatu for the purpose of Exercise TROPIC MERCURY 90 free from export duties and related charges and restrictions.
10. The New Zealand contingents will provide their own 24 hour ration packs which shall comply with the agricultural requirements of Vanuatu.
11. For the purpose of the command and control of members of the New Zealand contingent participating in TROPIC MERCURY 90 and for exercise purposes, the Government of Vanuatu shall permit the New Zealand contingent to establish and operate HF and VHF radio stations using frequencies approved by the Vanuatu Government.

12. New Zealand servicemen shall be permitted to wear uniform in performing official duties in Vanuatu.

13. New Zealand servicemen while in Vanuatu for purposes of Exercise TROPIC MERCURY 90 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. Live ammunition shall not be carried or used during TROPIC MERCURY 90. Blank ammunition and pyrotechnics shall be used during training.

14. The Government of Vanuatu shall grant New Zealand servicemen participating in Exercise TROPIC MERCURY 90 exemption from departure tax.

15. The rights of the two Governments with respect to Criminal and disciplinary jurisdiction over the New Zealand contingent participating in Exercise TROPIC MERCURY 90 shall be as follows:

- a. The New Zealand Service Authorities shall have the right to exercise within Vanuatu 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 Vanuatu.
- b. The authorities of Vanuatu shall have the right to exercise jurisdiction over New Zealand servicemen with respect to offences committed in Vanuatu and punishable by the law of Vanuatu and the right to exercise exclusive jurisdiction with respect to offences punishable by the law of Vanuatu 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 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 serviceman taking part in Exercise TROPIC MERCURY 90;

- 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 Vanuatu 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 ordinarily resident in Vanuatu unless they are New Zealand servicemen.
- d. The New Zealand Service authorities and the Government of Vanuatu shall assist each other in the arrest of New Zealand servicemen taking part in Exercise TROPIC MERCURY 90 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 which is to exercise jurisdiction in accordance with the above paragraphs.
- e. The Government of Vanuatu shall notify promptly the New Zealand Service authorities of the arrest of any New Zealand serviceman taking part in Exercise TROPIC MERCURY 90.
- f. Where the Government of Vanuatu has arrested a New Zealand serviceman taking part in Exercise TROPIC MERCURY 90 the Government of Vanuatu shall if so requested release him to the custody of the New Zealand Service authorities in Vanuatu pending completion of trial proceedings provided that he shall, on request, be made available to the Government of Vanuatu.
- g. The New Zealand Service authorities and the Government of Vanuatu 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 Government delivering them.
- h. The New Zealand Service authorities and the Government of Vanuatu 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 authorities or by the Government of Vanuatu, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge) he shall not be tried again for the same or substantially the same offence by either Government: this paragraph shall not prevent the New Zealand Service authorities from trying 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 by the Government of Vanuatu.
- j. In addition to the provision of any agreement entered into between New Zealand and Vanuatu concerning the return of prisoners from one country to the other, where a New Zealand serviceman taking part in Exercise TROPIC MERCURY 90 has been sentenced under the law of the Vanuatu to a term of imprisonment and he makes a request, which is supported by the Government of New Zealand, that his term of imprisonment be served in New Zealand, his request shall be given sympathetic consideration by the Government of Vanuatu.
- 16 a. The two Governments shall consult on the settlement of claims by one against the other arising from the 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 of the other in the performance of official duty where such damage or loss has occurred in the course of Exercise TROPIC MERCURY 90, due regard being had in the settlement of such claims and in the determination of appropriate compensation payable to the criteria set out in paragraph b 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 Vanuatu for meritorious claims by third parties

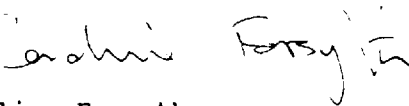
in respect of loss of life or injury to such third parties or loss of property or damage to property belonging to such third parties where such damage or loss is caused by the act or omission (done in the performance of official duty) of a New Zealand serviceman or servicemen while in Vanuatu for purposes of Exercise TROPIC MERCURY 90 and where the Government of Vanuatu, after investigation, certify the claims:

- (1) as having been submitted in good faith, within three months of the act of 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.

17. The Government of New Zealand shall take measures to ensure that members of their visiting contingents are aware of their duty to observe the laws and regulations of Vanuatu.

If the foregoing is acceptable to the Government of Vanuatu, 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.



Caroline Forsyth
High Commissioner

II

GOUVERNEMENT DE LA RÉPUBLIQUE
DE VANUATU
MINISTÈRE DES AFFAIRES ÉTRANGÈRES
ET DU SERVICE JUDICIAIRE

GOVERNMENT OF THE REPUBLIC
OF VANUATU
MINISTRY OF FOREIGN AFFAIRS
AND JUDICIAL SERVICES

28 August 1990


Excellency

I have the honour to refer to your letter of 28 August 1990 proposing an Agreement between the Government of Vanuatu and the Government of New Zealand on arrangements for the visit by a contingent of the New Zealand Armed Forces to Vanuatu for Exercise TROPIC MERCURY 90, the text of which reads as follows:

[See letter I]

In reply I have the honour to confirm that the afore-mentioned arrangements for Exercise TROPIC MERCURY 90 are acceptable to the Government of Vanuatu, and that your Letter and this reply shall constitute an Agreement between our two Governments which will enter into force on this date.

Please accept Excellency, the renewed assurances of my highest consideration.


Donald Kalpokas
Minister of Foreign Affairs
and Judicial Services

