

No. 33405

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**NEW ZEALAND  
and  
UNITED STATES OF AMERICA**

**Exchange of letters constituting an agreement concerning the  
establishment of certain mutual defense commitments.  
Washington, 16 July 1996**

*Authentic text: English.*

*Registered by New Zealand on 8 December 1996.*

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**NOUVELLE-ZÉLANDE  
et  
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de lettres constituant un accord concernant certains  
engagements mutuels en matière de défense. Washing-  
ton, 16 juillet 1996**

*Texte authentique : anglais.*

*Enregistré par la Nouvelle-Zélande le 8 décembre 1996.*

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT<sup>1</sup>  
BETWEEN NEW ZEALAND AND THE UNITED STATES OF  
AMERICA CONCERNING THE ESTABLISHMENT OF CERTAIN  
MUTUAL DEFENSE COMMITMENTS

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I

DEPARTMENT OF STATE  
WASHINGTON

July 16, 1996

Excellency,

I have the honor of referring to recent discussions which have taken place between officials of the Government of the United States of America and the Government of New Zealand (hereinafter referred to as the Parties) concerning the establishment of certain defense commitments between the two Parties. These discussions reflect the mutual desire of the Parties in the exercise of their national and mutual defense responsibilities for the security of the United States and New Zealand, to facilitate the process of cooperation in defense matters and to ensure that the respective interests of the Parties are fairly respected under international law.

I have, further, the honor to refer to the Agreement Concerning Mutual Defense Assistance, signed at Washington on June 19, 1952,<sup>2</sup> which, *inter alia*, provides that New Zealand is eligible to receive from the Government of the

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<sup>1</sup> Came into force on 16 July 1996, in accordance with the provisions of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, vol. 178, p. 315.

United States of America reimbursable military assistance under the provisions of Section 408(e) of the Mutual Defense Assistance Act of 1949. I have, still further, the honor to refer to the Parties' Agreement modifying the Agreement of June 19, 1952, signed at Wellington on March 25, 1960,<sup>1</sup> which, *inter alia*, provides that the assurances contained are applicable also to equipment, materials, information and services furnished under the Mutual Security Act of 1954, as amended. I have, still further, the honor to refer to the Parties' Agreement of Reciprocal Advance of Funds for Temporary Support of Armed Forces Personnel, signed at Wellington September 3, 1969,<sup>2</sup> which, *inter alia*, provides that when units or personnel of either the New Zealand or United States armed forces find themselves separated from their parent units and without adequate financial support, but in contact with the armed forces of the other State, the separated force may request funds for the purposes of disbursing pay and allowances or purchasing necessary supplies and services. Reimbursement of these funds shall be made in accordance with the procedures set forth in that Agreement.

In consideration of the above, I have the honor to propose that whenever our national defense organizations, within the limits of defense responsibilities and authorities as established by each Party, undertake to

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<sup>1</sup> United Nations, *Treaty Series*, vol. 380, p. 424.

<sup>2</sup> *Ibid.*, vol. 723, p. 233.

cooperate in writing, such arrangements shall be subject to this Agreement between the Parties concerning certain mutual defense commitments as to the following matters:

1. As regards issues of liability not addressed by other agreements between the Parties, the following shall apply:

(i) Each Party waives all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.

(ii) In the event of claims from third parties for injury or death to persons or damage to property arising from the performance of official duties in carrying out cooperative research, development, test, evaluation or production programs, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be adjudicated by the most appropriate Government as agreed.

(iii) As to i, and ii, above, if the Parties agree that the damage, injury or death is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability will be borne entirely by the Party of the culpable person.

(iv) Claims arising under any contract implementing a written arrangement shall be resolved in accordance with the provisions of the contract and shall be settled between the national defense organizations in accordance with their written arrangements.

2. The following provisions shall apply with respect to rights to own and use information provided or developed under a written arrangement:

(i) Information generated outside of a written arrangement that is provided by a national defense organization, to the other national defense organization in the implementation of that written arrangement, shall be used only for the purposes and in the manner set out in the written arrangement.

(ii) Information generated by or for a national defense organization in performance of a written arrangement shall be used by or for the other national defense organizations only for the purposes and in the manner set out in that written arrangement.

(iii) Information jointly generated by or for the national defense organizations shall be used by or for each organization only for the purposes and in the manner set out in the written arrangement.

(iv) Title to information generated by or for the national defense organizations shall be allocated, as necessary, solely or jointly to the Governments and

their contractors as set out in written arrangements between the national defense organizations.

3. Neither Party shall sell, transfer title to, disclose, or transfer possession of, or authorize such actions regarding (i) information generated outside of a written arrangement and provided by or for the other's national defense organization, (ii) information generated in the performance of a written arrangement which is jointly generated or which may be specified in the written arrangement, or (iii) material or equipment provided by or for the other's national defense organization, jointly acquired, or which may be specified in a written arrangement, to any third party (as may be defined in a written arrangement) without the prior written consent of the other's national defense organization.

4. As regards the lease or loan of material or equipment, each Party shall (i) use, for the purposes set forth in a written arrangement, maintain and return the material or equipment in as good condition as when received, reasonable wear and tear excepted (except expendables and items authorized for testing to destruction) or pay the cost of any damage or loss, and (ii) fulfill such other terms and conditions, as may be set forth in the written arrangement.

5. As regards the provision of logistics support, each Party shall provide, upon request and subject to availability, food, water, billeting, transportation,

petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, storage services, training services, repair and maintenance services, spare parts and components, access to and use of facilities, base operations support (including construction incident thereto), airfield and port services, as reflected in written arrangements between our national defense organizations. The furnishing of such support creates a corresponding obligation to provide cash reimbursement, replacement in kind, or replacement of equal value, which shall be discharged, as may be set forth in a written arrangement. Payment, if required, for the provision of such logistic support, shall be calculated upon such terms as are most favorable to the recipient under the national laws of the providing Party.

In order for this Agreement to apply to written arrangements between our national defense organizations, it must be explicitly invoked by or for that arrangement.

Any dispute regarding the interpretation or application of this Agreement shall be resolved by consultation between the Parties and shall not be referred to a national or international tribunal or third party for resolution or settlement.

Any dispute regarding the interpretation or implementation of any written arrangements so concluded by our national defense organizations shall be resolved by consultation between the signatories to such arrangements

and shall not be referred to a national or international tribunal or other third party for resolution or settlement.

If the foregoing is acceptable to your Government, I have the honor to propose that this Note and your Note in reply, to that effect, shall constitute an Agreement between our two Governments which shall enter into force on the date of your reply. This Agreement shall remain in force until six months after the date of the receipt of notice of termination by either Government.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

For the Secretary of State,

A handwritten signature in black ink, reading "Winston Lord" with a small superscript "1" above the "d". The signature is written in a cursive, slightly stylized hand.

His Excellency L. John Wood  
Ambassador of New Zealand

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<sup>1</sup> Winston Lord.



## II

16 July 1996

Excellency,

I have the honour of referring to your Note of today's date, which reads:

[*See note I*]

I have the honour to confirm that the proposal in Your Excellency's Note is acceptable to the Government of New Zealand, and accordingly that Your Excellency's Note and this Note in reply shall constitute an Agreement between our two Governments which shall enter into force on today's date.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.



L. J. WOOD  
Ambassador of New Zealand  
to the United States of America

The Honorable Ambassador Winston Lord  
Assistant Secretary of State  
Department of State  
Washington

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