

The Treaty of Tokehega — an exercise in law translation

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The purpose of this note is to deal with some of the difficulties experienced in translating European legal concepts into Tokelauan. The topic is dealt with in the context of the Treaty of Tokehega,¹ the first official legal document written in Tokelauan.

I. INTRODUCTION

The late Professor Quentin-Baxter was retiring as a scholar but well remembered as a teacher for his bubbling humour and his genial lecturing style. He had the ability to see the grand scheme and to place the present and the divergent clearly within it. He demonstrated a total control of his subject be it constitutional law or international law. His lectures in the Law Faculty were relaxed in style, measured, undistracted by notes, punctuated by a dry wit and illuminated by a wealth of personal experience.

Professor Quentin-Baxter was twice in Tokelau. On the first occasion, as he went up the beach from the tender of the RNZAF Sunderland flying-boat, he was rather startled to be approached by a village official who asked him (Quentin had been identified as the lawyer of the group) — “What is a suitable punishment for a person found guilty of adultery?” The problem was that the offender had committed the same crime on more than one occasion previously and had not reformed his ways. Quentin, thinking quickly,

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¹ Treaty between the United States of America and New Zealand on the Delimitation of the Maritime Boundary between Tokelau and the United States of America, *Treaties and other International Acts Series 10775*, (United States Government Printing Office, Washington, 1983). The Treaty was signed at Atafu on 2 December 1980, ratified by the President of U.S.A. on 16 August 1983, ratified by New Zealand on 26 August 1983, and entered into force on 3 September 1983. The text of the treaty is reproduced on p.136.

The political historian will note that the U.S.A. Senate Committee on Foreign Relations took “particular note” of the relationship between Tokelau and New Zealand and Australia (ANZUS allies) in formulating its support of U.S.A. ratification. There was concern by the Secretary of Defence, the U.S. Department of State and the U.S.A. Ambassadors in the Pacific that continued failure to act on the treaty weakened U.S.A. credibility with Pacific Island States and strained relationships with ANZUS allies. *Report of the Senate Committee on Foreign Relations on the Treaty, 21 March 1983*. Executive Rept. No 98-8 Appendix pp7, 9 and 11.

asked “What is the usual penalty for a first offence?” “About one week”. “Well, how about doubling it,” said Quentin.²

Another facet of Quentin’s career was his Japan experience. From those visits he retained an active interest in the Japanese language and in *kanji* in particular.³

The topic of this essay brings together in a narrow compass Tokelau, language, and international law in a manner that it is believed would have been of interest to Quentin.

II. THE TREATY OF TOKEHEGA

In the closing days of November 1980 the frigate HMNZS Otago sailed from Samoa for Tokelau. It had a special mission and a special group of civilians on board. The civilians included the Administrator of Tokelau, the Ambassador of the United States of America to New Zealand,⁴ and the Attorney-General of American Samoa. The reason for their trip to Tokelau was the signing of a treaty between the United States of America and New Zealand.

The voyage was not without its difficulties. The weather was unseasonably bad and when the boat arrived off Atafu where the treaty was to be signed no landings were possible for a full day. The weather was cloudy, windy, and the seas were very rough. One of the delegates⁵ was so ill that he was unable to go ashore for the official treaty ceremony. When the official party eventually did get ashore on 2 December 1980 the ceremony was performed by the Ambassador and two of the three Faipule.⁶ The party then returned to the ship to obtain the signature of the Faipule who was confined to bed on the ship. In these auspicious circumstances Tokelau’s first treaty was signed.

The Treaty of Tokehega is at an international legal level significant for nothing more than the delimitation of the maritime boundary between United States of America and

2 Quentin claimed no knowledge of Tokelau law and related the incident principally as a telling insight into Tokelau life and the traps awaiting visiting officials. But did he really have no knowledge of Tokelau law? The relevant legislation at the time was the Native Laws Ordinance 1917 —

Law No. 6. The punishment for adultery is imprisonment with hard labour for not less than three months and not exceeding twelve months. A man proved to have exchanged his wife shall be liable to a double penalty.

Law No. 24. — (1) In case of a second conviction for a crime of a like nature the Magistrate may, in his discretion, impose a penalty half as great again as that allowed by law for a first offence.

(2) In a third or subsequent conviction for a crime of a like nature the Court may award a punishment double the punishment allowed by law for a first offence of the same nature.

(3) In cases of habitual or hardened offenders the Court may sentence the accused to corporal punishment, not exceeding twenty lashes, in addition to any other punishment allowed by law.

3 As anyone who sat beside him during a tedious Faculty meeting can attest!

4 Mrs Anne C. Martindell. Defence Council Order (Navy) 1825 provides for a woman “to take passage in a ship, . . . with the express permission of the Chief of Naval Staff.”

5 He had in fact been temporarily discharged from Apia Hospital in Western Samoa to make the trip to sign the treaty.

6 Faipule in relation to any island means the chief representative of that island vis-a-vis the outside world.

New Zealand. It does however have a significant cultural aspect as far as Tokelauans are concerned, and this is highlighted by the fact that the Treaty is in Tokelauan as well as English, that it was signed in Tokelau, and that it was signed in Tokelau for New Zealand by the customary leaders of the three Tokelau communities.

For many Tokelauans this treaty gave Swains Island⁷ to the United States of America and that transaction was made in the context of an understanding or at least a belief that Tokelau would, as a consequence of the agreement, be able to gain revenue from the exploitation of its 200 mile exclusive economic zone⁸ by American fishing fleets.

In recent historical times there is a well-documented pattern of contact between Tokelau and Swains Island. The island has traditionally been regarded as a part of Tokelau and many Tokelauans have gone to Swains Island to work. Many too have been born there. The community of Swains Island numbers fewer than 50 people, is Tokelauan speaking and has clear cultural links with Tokelau.⁹ The international legal situation however does not readily admit the links. The early British legal documents speak of the British having control over the Union Island group and whenever the islands of that group are specified the reference is to the 3 atolls of today's Tokelau.¹⁰ Equally in the New Zealand legal documents there is at a domestic level¹¹ reference to only 3 islands. There appears never to have been any pretention by the British to

- 7 Called Olohega in Tokelauan. It is to be distinguished from Olosega of the Manuia Group of American Samoa. It has also been confused at times with Rakahanga of the Northern Cook Islands. The name Olohega is perhaps a reference to the somewhat golden aspect presented by the leaves of the coconut palms of the atoll when viewed from the sea.
- 8 Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977. As at 1 January 1987, no regulations had been promulgated under sections 8 or 11 of this Act. The question of exploitation of the exclusive economic zone is not expressly addressed by the Treaty: See articles IV and VI of the Treaty. See the paper by Dr. Aikman in this volume. During the negotiation of the Treaty, discussions did take place relating to the fishery resources within the 200 mile zone. "The United States sought and received assurances that United States flag vessels and foreign vessels supplying the cannery in American Samoa will not be barred from seeking licences to fish in the Tokelau 200 mile zone." *Op.cit. supra. n.1,4.*
- 9 The historical and customary background to the issue of Swains Island warrants an article in itself. The pattern of European contact is dealt with in Hooper "A Tokelau Account of Olosega" (1975) 10 *J. Pacific History*, Part 3, 89. The history of the Tokelau customary relationship is still to be written.
- 10 E.g. Gilbert and Ellice Gaol and Prison Ordinance 1916, Schedule B, Union Islands are Fakafo, Nukunonu and Atafu.
- 11 E.g. s.2(1) of the Tokelau Act 1948. An apparent exception is the N.Z. Order in Council of 25 September 1923. (*N.Z. Gazette*, No.71, 27 September 1923). Until 1962 the relevant Minister made reference, in the annual reports on Tokelau to Parliament, to Swains (and its annexation to American Samoa) as one of the Tokelau Islands.

sovereignty over Swains Island;¹² from the time of official New Zealand administration¹³ there was a clear claim to sovereignty by the United States of America.¹⁴ The legal situation by 1980 appears clearly to have been as stated in the Treaty: “New Zealand has not claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa.”¹⁵ Not surprisingly the “belatedly asserted” and “unsubstantiated”¹⁶ American claim to sovereignty over the three islands of Tokelau is relinquished.

The Treaty of Tokehega does not mention Swains Island nor relate to the sovereignty over Swains Island except in the sense that it is implicit in the Treaty that Swains Island is not and will not be part of New Zealand. The involvement of the Tokelauan communities in the formalising of the boundary treaty would appear to relate to the customary dispute between the people of Tokelau and the United States government in respect of sovereignty over Swains Island. This view is borne out by the Report of the U.S. Senate Committee on the role of the treaty.¹⁷ The Treaty therefore attempts to settle at one and the same time the domestic political issue as well as the international legal one.

The title of the treaty in the Tokelauan version, *tokehega*, literally means a taking away.¹⁸ When the elders of Tokelau gave this name to the Treaty, were they thinking of the treaty as a giving away or a taking away of Swains Island from Tokelau, or did they have in mind the combination of the first two syllables of the word Tokelau and the last

12 In correspondence between the Lord Commissioners of Admiralty and the Secretary of State (Foreign Affairs) presented in a despatch of 15 June 1917 to the New Zealand Prime Minister it was said in relation to Swains island —

1. . . . the Secretary of State for the colonies makes no claim to the island on behalf of any colonial Government.

2. My Lords presume that it must now be considered that this island definitely belongs to the United States of America

(National Archives of New Zealand, Series 108, 6/22, Swains island; Gente Hermosa, 1917).

13 11 February 1926.

14 Swains became part of American Samoa in 1925 by annexation.

15 Paragraph 7 of the preamble. I.e. there was no territorial dispute between New Zealand and U.S.A. on the matter:

A treaty settling the maritime boundary between Tokelau and American Samoa was concluded between New Zealand and the United States on 2 December.

(1980) 30 New Zealand Foreign Affairs Review, No. 4, 51.

On 21 June the United States Senate voted by an overwhelming majority of 94 to 4 to ratify treaties which United States representatives had signed with Tuvalu, Kiribati, the Cook Islands and New Zealand (in respect of Tokelau) in 1979 and 1980. Although the four treaties differ substantially, they have in common the effective renunciation of territorial claims by the United States to part or, in the case of Tokelau, all the territory of the Pacific Island signatory.

(1983) 33 New Zealand Foreign Affairs Review, No. 2, 47.

16 Op. cit. supra n. 1, 9-10.

17 The purposes of the treaty are to establish the maritime boundary between American Samoa and Tokelau, to resolve the status of three Tokelauan Islands in the area, and to confirm United States sovereignty over Swains Island Op.cit. supra n.1,1.

18 Though not a taking without asking (*kaihohoa*).

two syllables of the word Olohega?¹⁹ This question was discussed in the General Fono²⁰ and the answer given by the elder who proposed the name Tokehega was that the second alternative was intended,²¹ though the ambiguity inherent in the name enables different views to be held about the treaty. Nevertheless 3 September each year is celebrated in Tokelau as Tokehega Day and it is probably reasonable to assume that there would be no day of celebration if the treaty was seen to represent a confiscation of property.

III. TOKELAUAN AS A LAW LANGUAGE

Tokelau tradition is a one without written history and without a Bible in Tokelauan.²² When the British came to Tokelau in the 19th century they found an oral culture. To the extent that there was a written culture it was, as a result of the Christian missionary influence, characterised by the use of the Samoan Bible for the purposes of worship. Samoan was the language of the literate and was used in the early legal documents for Tokelau. In the British colonial period a number of laws for Tokelau were published bi- or tri-lingually but the language alternative for use in Tokelau was in each case Samoan.²³

In 1980, with the delimitation of the maritime boundary between the United States of America and New Zealand in the region of Tokelau, Tokelauan, which by then was being used extensively as a written language for the purposes of the islands,²⁴ for the first time found use in an official legal document. The translator,²⁵ a Tokelauan skilled in Tokelauan, English, and a number of other Pacific languages had no formal legal knowledge and was therefore in late November 1980 confronted by a formidable task in the form of the translation of this short document from English into Tokelauan.

The word law is itself a challenge because of the wide range of terms that the English language has for types of law.²⁶ In Tokelauan there is but one word — *tulāfōno*, and that word relates typically, but not exclusively, to the custom of Tokelau²⁷ which provides

19 Tokelauan for Swains Island.

20 The General Fono is the main policy-making body for Tokelau; it meets twice a year and is usually made up of 15 representatives from each of the 3 atolls of Tokelau.

21 I.e. the reference is to a treaty about Tokelau and Swains Island.

22 A bilingual Roman Catholic Missal was published in 1985 in New Zealand under the title *Tuhi Miha Ha Muamuaifaitauga Aho Ha-Fakatokelau-Fakapeletania*.

The first full dictionary was published in July 1986: *Tokelau Dictionary* (Office for Tokelau Affairs, Apia, 1986). Prior to that the only formal written access to the language was through D. W. Boardman *Vocabulary Tokelauan — English, English-Tokelauan* (Department of Education, Wellington, 1969), and Hosea Kirifi and J. H. Webster *Tokelau-English Dictionary* (Tokelau, 1975) — there is a complementary English-Tokelau word list compiled by Maselino Patelesio.

23 E.g. *Native Laws of the Union Islands 1912* (Government Printer, Suva, 1914); the *Native Laws Ordinance 1917*.

24 English has been taught in Tokelau schools from 1950, Tokelauan from 1970.

25 Hosea Kirifi, co-author of this paper.

26 E.g. Act, Regulations, precedent, rule, Ordinance, Order, Proclamation.

27 I.e. to non-law.

the main range of rules within the Tokelauan experience. In the Law Project²⁸ a number of epithets have been added to the word *tulāfōno*²⁹ to give the specific connotations necessary to convey the English meanings.³⁰ With hindsight, and in the light of the experience of some six years of this law translation work, it is proposed now to look back to the Treaty of Tokehega to see how the ideas were then communicated and what, if the Treaty were to be translated into Tokelauan today, the changes to the Tokelauan version might be.

IV. THE TRANSLATION OF THE TREATY

A. General

The first thing to note is the development of a vocabulary to deal with specific technical legal³¹ terms of English and the use of words to deal with the phenomena of the international community³² such as the names of states and terms for the particular type of political evolution that Tokelau is expected to experience as a territory under the U.N. Committee of 24.³³

28 The Tokelau Law Project was initiated in 1981 —

1. To prepare a statement of the law presently in force in Tokelau.
2. To provide, by way of commentary or otherwise, the basis for a consolidated edition of the legislation in force in Tokelau; to indicate any legislative change by way of repeal, amendment, or addition necessary for the legislation —
 - (a) accurately to reflect the present constitutional and legal structures of Tokelau;
 - (b) to be internally consistent.
3. To report on the revision and reform of the Tokelau legislation with the view to the production of a systematic text in the nature of a revised Laws of Tokelau for the ready reference and use of those concerned with Tokelau Law.
4. To investigate Tokelau custom with a view to its recognition by or incorporation in legislation where appropriate.

29 Aspects of the translation programme and the words and phrases now in use are dealt with in the working paper, *Tokelau Law Lexicon* (Ministry of Foreign Affairs, Wellington, 1986).

30 The word "Act" is accordingly translated and recognised within Tokelau as *tulāfōno faka-Palemene*. In this treaty with the United States of America that translation of the word "Act" is proper in paragraph 4 of the Preamble but inappropriate in paragraph 5.

31 A geophysicist may one day make a similar survey of the scientific language of the Treaty.

32 E.g. atunuku

Iunaite Hitete ò Amelika/

Iunaite Hitete

Niu Hila

Mālō Kaufakatahi

Amelika Hamoa

Pahefika i Haute

Mālō

tulāfono faka-vā-o-mālō

tulāfono o te tai

country

U.S.A.

New Zealand

United Nations [literally the governments joined as one]

American Samoa

South Pacific

Government

international law

law of the sea

33 The Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

Leaving aside printing and proofing errors, of which there are few,³⁴ there are a number of points at which the Tokelauan text clearly does not express the intention of the English legal text. On the other hand the rather sophisticated shift in the English text between passive and active moods³⁵ and between references to sovereignty (*pulea*) and references to administration (*tauhia*),³⁶ though perhaps not understood in the Tokelauan in their full technical significance, by and large survive the translation process very well.

B. Specific

1. The title

The title of the treaty in each language is different. The Tokelauan version adds the popular title of the treaty by way of apposition and in primary place.³⁷

The title is also interesting from an orthographic point of view because the Tokelauan alphabet³⁸ contains no letter “r”. The influence here is clearly from the Samoan language which does have an “r”. In Tokelauan speech both *Amerika* and *Amelika* will be heard but a linguistically correct version would substitute “l” for the “r” in this word and others in the treaty.

Feagaiga (a doing) is used for treaty; it is a formal word for agreement. In paragraph 8 of the Preamble the less formal equivalent *maliliega* is used.

The practice of marking boundaries is traditional in Tokelau and the language used here — *faiga* for delimit and *tuakoi* for boundary — is taken directly from everyday usage.

2. The preamble

(a) Paragraph 1

Tiute is a clear borrowing from English but has been a part of the Tokelauan language for a long time. It is used to translate duty, obligation, responsibility, and is also used in the context of a customs duty. The complementary idea of a right is rendered by *aia*.

Te faia o a latou tonu e ki latou lava is used, both here and in article V, to translate self-determination and carries the meaning “the making of their own decision”. The

34 In the Preamble para.8 *fakamau* should read *fakamautu*, in art. 1 *Tokaleu* [corrected in the Appendix to this paper] should read *Tokelau*, in art. I.7. the Tokelauan and English coordinates are different; in art.IV *hi na vaega* should read *hi na vaega*; in art.VII para.2. *Fakaigilihi* should read *Faka Igilihi* and *Mate Fakatokelau* should read *ma te gagana Faka Tokelau*. See also the comment in the text about the reproduction of the Preamble para. 7.

35 E.g. art. III.

36 Preamble para.7.

37 The original English draft, from which the translation was made, began “The Treaty of Tokehega”; that title was omitted from the final English version.

38 a e i o u f g k l m n p h t v. There is ambivalence on this matter in both Samoa and Tokelau. The “R” is usually retained in the names of people and places in Samoa. “*Amerika*” is much more frequently heard in Western Samoa than in Tokelau.

word *filifiliga* (choice) was not used. A better translation, given the implications of self-determination, would be *te faia o a latou filifiliga e ki latou lava*: the making of their choice by themselves.

Fakahalahalauga which means an announcement or something broadcast is used for Declaration.

Tutokatahi (standing alone) is used for independence.

“Colonial countries and peoples” is rendered in a form which means literally “countries and peoples under colonial power”.

(b) *Paragraph 4*

The Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 suffers in the Tokelauan from a transposition of the epithet “exclusive” from zone to economic. The standard Tokelauan title for the Act is now *te Tulafono faka-Palemene mo te Hone Fakapitoa mo te Tamaokaiga ma te tai o Tokelau*. Territorial Sea is *tai o Tokelau* (the sea of Tokelau) as distinct from the high seas which is rendered as *tai haoloto* (the free sea).

(c) *Paragraph 5*

The United States Act³⁹ is translated as the “1976 Law for conservation of fisheries”. A more accurate and complete translation would be *te Tulafono tuhia o te tauhaga 1976 a te Iunaite Hitete o Amelika mo te puipuiga o na mea tau faigafaiva ma te pulepulega o na mea tau faigafaiva*.

Puipuiga is used for both protection and conservation.⁴⁰

(d) *Paragraph 6*

“A claim to sovereignty” has been rendered as “its claim to sovereignty”. *Mau* is claim; *pulea* (and the grammatical variations *pule* and *pulega*) means power or authority.

(e) *Paragraph 7*

This paragraph has suffered badly in reproduction. It should read —

I te iloa atili ko te Iunaite Hitete e pulea ma tauhia e ia na motu e takua ko Amelika Hamoa ma ko Niu Hila e heki fai hana mau pe na tauhi e ia e ve he vaega e o Tokelau he tahi o na motu e tauhia nei e te Iunaite Hitete e ve he vaega e o Amelika Hamoa.

3. *Article I*

The word *vaega*, here used for article, is also used for the major subdivisions of other law texts.⁴¹ *Vaega* is used in article IV, for stylistic reasons, to translate “rule” (*tulafono*).

4. *Article II*

Jurisdiction in a judicial context is usually translated by *pule*. Here it is translated as

³⁹ The recommended translation for “Act” as currently used in references to New Zealand statutes is based on their origin in Parliament. This is inappropriate for U.S.A.

⁴⁰ *Puipui* are also the brackets () used in writing.

⁴¹ E.g. section, regulation, clause. *Vae* is a limb or part.

“legal rights” (*aia faka-te-tulafono*) to avoid confusion between jurisdiction and sovereignty.

In the English text “for any purpose” occurs in both sentences of the article. The Tokelauan equivalent *mo ho he fuafuaga* inexplicably is not in the first sentence. It should have been added after the word *gaoioiga*.

Articles III and IV both refer to seabed and subsoil. The corresponding Tokelauan phrases are *takele o te tai* (the bed/surface soil of the sea) and *te kekekele i lalo ifo o te takele o te tai* (the soil under the seabed).

In the translation the words *o te fogakekelekele pito ki luga* (of the topsoil above) are unhelpful. They would be better substituted by *o te takele o te tai*.

5. Article IV

“Prejudice” is rendered as *faka he aoga* which means invalidate, cancel, destroy, make useless. A better translation of the idea would be *fakavaivai* (weaken).

6. Article V

“Together comprising Tokelau” was translated *e aofia i loto o Tokelau* (which are included in Tokelau). The intention of the English is better conveyed by *ie kua tuku fakatahi ke fai ai ia Tokelau* (which put together make Tokelau).

“Is vested in” (*kua tuku atu ki tagata o Tokelau*) carries the meaning in Tokelauan of “given to”. Much more accurate would be *nofo* (resides), *e o Tokelau* (belongs to Tokelau), or best, *mea totino* (the property of).

Fuafuaga (purpose; plan) is used for Charter. More appropriate would be *Feagaiga fakavae* (foundation treaty). That usage would be consistent with the current usage of *Tulafono fakavae* (foundation law) for Constitution.

7. Article VI

“Promote” where it first occurs is translated by *fakaleleia* which means improve. Where “promote” occurs the second time it was translated by *fakaauau* which means continue or carry on. *Fakalototele* (encourage) would better translate the original English where “promote” occurs the second time.

“Appropriate Government entities”⁴² is *ma te va o na Malo* (between the governments). A better translation would be *ma te va o na ofiha tatau o na malo* (between the appropriate offices of the governments).

42 The translation of entity in this context is difficult because Tokelau has no direct knowledge of corporations or other fictional persons.

8. *Article VII*

“Ratification” is rendered by *fakamaoniga* which literally means confirmation or approval; “into force” was translated by *fakamalohia* which means enforce. *Fakaaloakia* (be effective) would be the proper word to use for the English metaphorical expression “into force”.

9. *Subscription*

“The authentic text” is *ko te hakoga tena* (that which is correct/true).⁴³

V. CONCLUSION

The general purport of the Treaty of Tokehega is successfully conveyed by the Tokelauan version. It is however clear that a translation made in 1986 would be more accurate. It would benefit from the law translation experience of the intervening years, and would, from the Tokelau viewpoint, have a more positive tone than the official translation of 1980.

[For Appendix — see page 136]

⁴³ *Faka-Igilihi* is used for English. This is a recent educated usage influenced by English. Other usages are *nanu* which literally means “mumble”, and *papalagi* which means “foreigner”. An older formal usage still current (see supra n.22), is *Peletania* a derivative from the word British.

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**TREATY BETWEEN THE UNITED STATES OF AMERICA AND NEW ZEALAND
ON THE DELIMITATION OF THE MARITIME BOUNDARY BETWEEN TOKELAU
AND THE UNITED STATES OF AMERICA**

The two Governments;

Recalling the responsibilities exercised by New Zealand in respect of Tokelau pending the exercise by the people of Tokelau of their right to self-determination in accordance with the United Nations declaration on the granting of independence to colonial countries and peoples;

Noting that the people of Tokelau, acting through the General Fono of Tokelau, have requested that New Zealand take steps to delimit the maritime boundaries of Tokelau;

Desiring to strengthen the existing bonds of friendship between Tokelau and the United States and in particular between the peoples of Tokelau and American Samoa;

Noting the Tokelau Territorial Sea and Exclusive Economic Zone Act 1977;

Noting the Fishery Conservation and Management Act 1976 of the United States of America;¹

Noting that the United States of America has maintained a claim to sovereignty over the islands of Atafu, Nukunonu, and Fakaofu and that this claim has not been recognised by New Zealand or the people of Tokelau;

Noting further that the United States exercises sovereignty over and administers the islands known as American Samoa and that New Zealand has not claimed or administered as part of Tokelau any of the islands presently administered by the United States as part of American Samoa;

Desiring to establish a maritime boundary between Tokelau and the United States of America have agreed, with the concurrence of the people of Tokelau, as follows:

ARTICLE I

The maritime boundary between Tokelau and the United States shall be determined by the geodetic lines connecting the following coordinates:

| Latitude (South) | Longitude (West) |
|------------------|------------------|
| 10°01'26" | 168°31'25" |
| 10°07'52" | 169°46'50" |
| 10°10'18" | 170°16'10" |
| 10°15'17" | 171°15'32" |
| 10°17'50" | 171°50'58" |
| 10°25'26" | 172°11'01" |
| 10°46'15" | 173°03'53" |
| 11°02'17" | 173°44'48" |

ARTICLE II

The geodetic and computational bases used for determining the coordinate values in Article I are the World Geodetic System, 1972 (WGS 72) and the following charts and aerial plans:

¹ 90 Stat. 331; 16 U.S.C. 1801.

**KO TE FEAGAIGA O TOKEHEGA KO HE
FEAGAIGA I TE VA O NIU HILA MA TE IUNAITE HITETE O AMERIKA
I TE FAIGA O NA TUAKOI I TE TAI I TE VA O TOKELAU
MA TE IUNAITE HITETE O AMERIKA**

Ko na Malo e lua:

I te manatua o te tiute e taukave e Niu Hila e fakatatau ki Tokelau ke fakatali ai te gaoioiga a tagata o Tokelau ki te latou aia ki te faia o a latou tonu e ki latou lava, e tuha ai ma te fakahalalauga a Malo Kaufakatahi i te tuku atu o te tutokatahi ki atunuku ma tagata e i lalo i na pulega faka kolone;

I te iloa ko tagata o Tokelau na tuku atu ta latou talohaga e kui atu i te Fono Aofia a Tokelau kia Niu Hila ke fai e ia na lahaga ke fakailoga ai na tuakoi i te tai o Tokelau;

I te manakoga ke fakamalohia te hokotaga faka uo i te va o Tokelau ma te Iunaite Hitete kae maihe lava i te va o tagata o Tokelau ma Amerika Hamoa;

I te iloa o te Tulafono o te tauhaga 1977 mo te Hone o te Tamaokaiga Fakapitoo i te Tai o Tokelau;

I te iloa o te Tulafono o te tauhaga 1976 a te Iunaite Hitete o Amerika mo te Puipuiga o Mea Tau Faigafaiva;

I te iloa ko te Iunaite Hitete o Amerika e fakamautu tana mau ki te pulea o na motu ko Atafu, Nukunonu, ma Fakaofu ma ko tenei mau e he amanakia e Niu Hila pe ko tagata o Tokelau;

I te iloa atili ko te Iunaite Hitete e pulea ma tauhia e ia na motu e takua ko Amerika Hamoa ma ko Niu Hila e heai hana mau pe ko hana tauhiga na fai fakatahi ki he motu ma Tokelau i ho he motu o Amerika Hamoa ie e tauhi nei e te Iunaite Hitete.

I te manakoga ke fakamau te tuakoi i te tai i te va o Tokelau ma Iunaite Hitete o Amerika kua malilie ai, fakatahi ma te maliliega o tagata o Tokelau, e ve ona fakaali atu i lalo:

VAEGA I

Ko te tuakoi i te tai i te va o Tokelau ma te Iunaite Hitete ka fakailoga i na laina fuafua o te tino o te lalo lagi e fehokotaki ai na tulaga ienei i lalo:

- | | |
|---|---|
| 1. 10° 01' 26" Haute 168° 31' 25" Hihifo | 5. 10° 17' 50" Haute 171° 50' 58" Hihifo |
| 2. 10° 07' 52" Haute 169° 46' 50" Hihifo | 6. 10° 25' 26" Haute 172° 11' 01" Hihifo |
| 3. 10° 10' 18" Haute 170° 16' 10" Hihifo | 7. 10° 26' 15" Haute 173° 03' 53" Hihifo |
| 4. 10° 15' 17" Haute 171° 15' 32" Hihifo | 8. 11° 02' 17" Haute 173° 44' 48" Hihifo |

VAEGA II

Ko na faiga kua fakaaoga i te fuafuaga o na laina i te tino o te lalolagi ke fakailoga ai na tulaga i te Vaega I ko te Faiga a te Lalolagi mo te Fuafuaga o na Laina, 1972 (WGS 72) ma na fafanua o te tai ma na fuafuaga i te ea, iena i lalo:

- ko na fafanua o te tai na lomiga e te Vaega mo te Fuafuaga o te Tai a te Iunaite Hitete o Amerika; numeru 83484, lomiga e 6 Mati 26 1977;

- Charts published by the National Ocean Survey of the United States of America; NOS No. 83484, 6th edition, March 26, 1977;
- Charts published by the Defence Mapping Agency of the United States of America; DMAHTC No. 83473, 7th edition, May 8, 1976;
- Aerial Plans published by the Department of Lands and Survey of New Zealand;
 - No. 1036/7C, 1974
 - No. 1036/7B2, 1974
 - No. 1036/8d, 1975

ARTICLE III

On the side of the maritime boundary adjacent to Tokelau, the United States of America shall not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil. On the side of the maritime boundary adjacent to American Samoa there shall not be claimed or exercised for any purpose in respect of Tokelau sovereign rights or jurisdiction over the waters or seabed and subsoil.

ARTICLE IV

The maritime boundary established by this Treaty shall not affect or prejudice in any manner either Government's position with respect to the rules of international law concerned with the exercise of jurisdiction over the waters or seabed and subsoil or any other matter relating to the Law of the Sea.

ARTICLE V

The United States recognises that sovereignty over the islands of Atafu, Nukunonu and Fakaofu, together comprising Tokelau is vested in the people of Tokelau and is exercised on their behalf by the Government of New Zealand pending an act of self-determination in accordance with the Charter of the United Nations.²

ARTICLE VI

The Government of the United States of America and the Government of New Zealand, in the spirit of peace and friendship existing between the two Governments and peoples, agree to cooperate with a view to promoting social and economic development in accordance with the wishes of the peoples of Tokelau and American Samoa, and to work towards the advancement of the South Pacific region as a whole. To these ends they shall promote discussions between their peoples and appropriate Government entities, in particular between the peoples of Tokelau and American Samoa.

ARTICLE VII

This Treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification.³

Done in triplicate at Atafu this second day of December 1980, in the English and Tokelauan languages of which the English will be the authentic text.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA

Anne C. Martindell

FOR THE GOVERNMENT OF
NEW ZEALAND

Itieli Pereira
Amusia Patea
Aloisio Ineleo

[SEAL]

[SEAL]

² Signed June 26, 1945. TS 993; 59 Stat. 1031; 3 Bevans 1153.

³ Sept. 3, 1983.

- ko na fafanua o te tai na lomía e te Ofiha o Fafanua tau te Puipuiga a te Iunaite Hitete o Amerika; DMAHTC numerá 83473, lomaiga e 7 Me 8, 1976;
- ko te Fuafuaga i te Ea na lomía e te Ofiha o Kelekele ma Fuafuaga a Niu Hila; numerá 1036/7C, 1974
numerá 1036/7B2, 1974
numerá 1036/8d, 1975

VAEGA III

I te itu o te tuakoi i te tai e pito ki Tokelau, ka he faia ai e te Iunaite Hitete o Amerika hana mau pe ni gaoioiga mo ni aia e pulea ai pe ni aia faka te tulafono ki te tai pe ko te takele o te tai ma te kelekele i lalo ifo o te fogakelekele pito ki luga. I te itu o te tuakoi i te tai e pito ki Amerika Hamoa ka heai he mau pe ni gaoioiga mo ho he mafuaga ki ni aia faka pulega pe ni aia faka te tulafono a Tokelau ki te tai pe ko te takele o te tai ma te kelekele i lalo ifo o te fogakelekele pito ki luga.

VAEGA IV

Ko te tuakoi i te tai teia kua fakamautu i tenei Feagaiga, ka he afia ai pe faka he aoga ai i ho he auala te tulaga o he Malo i na malo e lua i te itu e uiga hi na vaega o te tulafono faka-va-o-malo e fakatatau ki te fakagaioioiga o te aia faka te tulafono ki te tai pe ko te takele o te tai ma te kelekele i lalo ifo o te fogakelekele pito ki luga pe ko he tahi matakupu e uiga ki te Tulafono o te Tai.

VAEGA V

E amanakia e te Iunaite Hitete ko te pule ki na motu ko Atafu, Nukunonu ma Fakafo ie e aofia i loto o Tokelau kua tuku atu ki tagata o Tokelau ma e fakagaioioi mo latou e te Malo o Niu Hila ke fakatali ai te faiga mo te faia o a latou tonu e ki latou lava e tuha ai ma te Fuafuaga a Malo Kaufakatahi.

VAEGA VI

Ko te Malo o Iunaite Hitete o Amerika ma te Malo o Niu Hila, i he agaga o te filemu ma te fakauo i te va o na Malo e lua ma tagata kua malilie ke galulue fakatahi ma he manatu ke fakaleliea te agai ki mua o te va fealoaki ma te tamaokaiga e tuha ai ma na manakoga o tagata o Tokelau ma Amerika Hamoa, ma galulue mo te fakafanoga ki mua o te Pahefika i Haute katoa. Ona ko ienei fakamoemoega ka fakaauau ai e ki laua na talanoaga i te va o la tagata ma te va o na Malo, kae maihe lava i te va o tagata o Tokelau ma Amerika Hamoa.

VEAGA VII

Ko tenei Feagaiga ka fakalagolago ki he fakamaoniga ma ka fakamalohia i te aho e fehuiaki ai na pepa o te fakamaoniga.

Na fai i ni lomiga e tolu i Atafu i te aho lua o Tehema 1980, i te gagana Fakaigilihi mate Fakatokelau mae ko te Fakaigilihi ko te hakoga tena.

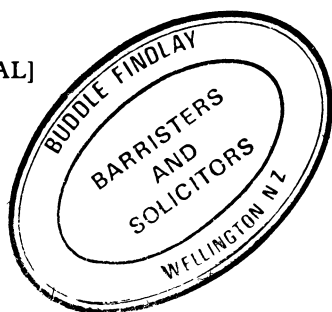
TE IUNAITE HITETE O AMERIKA

Anne C. Martindell

NIU HILA

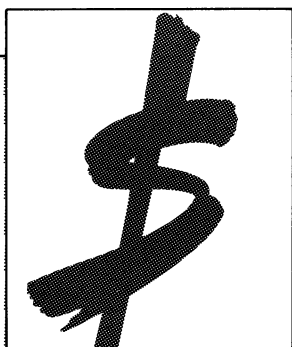
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