

26/5/12

4 November 1988

The Hon Norman George  
Minister of Foreign Affairs  
RAROTONGA

I have the honour to refer to the talks held between officials from New Zealand and the Cook Islands in July 1988 concerning the visit of a contingent of the New Zealand Armed Forces in connection with the Patrol Boat Housing Project to be conducted between 6 September 1988 and 20 January 1989. The purpose of this project is to construct three houses to accommodate the patrol boat advisory team which will be stationed in Rarotonga to support the Cook Islands patrol boat.

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

1 The Government of New Zealand will send a contingent of 18 Army personnel to the Cook Islands between 6 September 1988 and 20 January 1989 to construct three houses in Rarotonga for the use of the Australian/New Zealand patrol boat advisory team.

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 the Cook Islands for the purpose of taking part in the Patrol Boat Housing Project in the Cook Islands.

"New Zealand servicemen" means individual members of the contingent of the New Zealand Armed Forces who will be visiting the Cook Islands for the purpose of taking part in the Patrol Boat Housing Project.

/"New Zealand

"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 the Patrol Boat Housing Project.

3 A small advance party comprising 3 personnel from the construction team contingent will arrive in Rarotonga on 6 September 1988 to finalise arrangements for the exercise.

4 The Government of the Cook Islands will make available and lease to the Government of New Zealand a suitable block of land for the construction of three prefabricated houses.

5 The Government of the Cook Islands will not levy landing charges against the Government of New Zealand for the use of airport facilities in Rarotonga in connection with the Patrol Boat Housing Project.

6a The Government of the Cook Islands will facilitate the admission of the New Zealand contingent for the purpose of taking part in the Patrol Boat Housing Project.

b The following documents will be required to be in the possession of members of the New Zealand contingent for entry into the Cook Islands for purposes of taking part in the Patrol Boat Housing Project.

(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 will not be required by members of the New Zealand contingent for entry into the Cook Islands for purposes of taking part in the Patrol Boat Housing Project.

7 All freight, stores and equipment and construction materials required by the New Zealand contingent for purposes of the project in which they are participating will be given entry free of all duties, taxes and harbour fees 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.

8 The New Zealand contingent will be permitted to take with it upon departure all equipment brought by it into the Cook Islands for the purpose of the Patrol Boat Housing Project free from export duties and related charges and restrictions.

9 Cook Islands registration will not be required for New Zealand Army vehicles used for the project.

10 New Zealand servicemen may wear uniform in performing official duties in the Cook Islands.

11 The Government of the Cook Islands will grant New Zealand servicemen participating in the Patrol Boat Housing Project exemption from departure tax.

12 The rights of the two Governments with respect to criminal and disciplinary jurisdiction over the New Zealand contingents participating in the Patrol Boat Housing Project will be as follows:

- a The New Zealand Service authorities on behalf of the Government of New Zealand will have the right to exercise in the territory of the Cook Islands all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over all New Zealand servicemen taking part in the Patrol Boat Housing Project.
- b The Government of the Cook Islands will have jurisdiction over all New Zealand servicemen taking part in the Patrol Boat Housing Project with respect to offences committed in the territory of the Cook Islands and punishable by the law of the Cook Islands.
- c The New Zealand Service authorities will have the right to exercise exclusive jurisdiction over New Zealand servicemen with respect to offences punishable by the law of New Zealand but not by the law of the Cook Islands.
- d The Government of the Cook Islands will have the right to exercise exclusive jurisdiction over all New Zealand servicemen taking part in the Patrol Boat Housing Project 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 will apply:
  - (1) the New Zealand Service authorities will have the primary right to exercise jurisdiction over New Zealand servicemen in relation to:

/(a) offences

- (a) offences solely against the property or security of New Zealand;
  - (b) offences solely against the person or property of a New Zealand serviceman or servicemen taking part in the Patrol Boat Housing Project;
  - (c) offences arising out of any act or omission done in the performance of official duty;
- (2) In the case of any other offences the Government of the Cook Islands will have the primary right to exercise jurisdiction.
- (3) If the Government having the primary right to exercise jurisdiction under the foregoing paragraphs decides not to exercise jurisdiction, it will notify the other Government as soon as practicable: the Government having primary jurisdiction in any such situation will give sympathetic consideration to a request from the other Government for waiver of jurisdiction.
- f The foregoing paragraphs will 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 servicemen taking part in the Patrol Boat Housing Project.
- g The New Zealand Service authorities and the Government of the Cook Islands will assist each other in the arrest of New Zealand servicemen taking part in the Patrol Boat Housing Project 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.
- h The Government of the Cook Islands will notify promptly the New Zealand Service authorities of the arrest of any New Zealand serviceman taking part in the Patrol Boat Housing Project.
- i Where the Government of the Cook Islands has arrested a New Zealand serviceman taking part in the Patrol Boat Housing Project the Government of the Cook Islands will if so requested release him to the custody of the New Zealand Service authorities in the Cook Islands pending completion of trial proceedings provided that he will, on request, be made available to the Government of the Cook Islands.

- j The New Zealand Service authorities and the Government of the Cook Islands will 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.
- k The New Zealand Service authorities and the Government of the Cook Islands will notify each other of the disposal of all cases in which there are concurrent rights to exercise criminal jurisdiction.
- l Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service authorities or by the Government of the Cook Islands, and has been convicted or acquitted (which expressions will include any other final disposal of a charge) he may not be tried again for the same or substantially the same offence by either Government: this paragraph will 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 the Cook Islands.
- 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 New Zealand serviceman taking part in the Patrol Boat Housing Project has been sentenced under the law of the Cook Islands 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 will be given sympathetic consideration by the Government of the Cook Islands.
- 13a The two Governments will 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 the Patrol Boat Housing Project, due regard being had in the settlement of such claims and in the determination of appropriate compensation

/payable

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 will 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 damage or loss is caused by the act or omission (done X in the performance of official duty) of a New Zealand serviceman or servicemen while in the Cook Islands for purposes of the Patrol Boat Housing Project and where the Government of the Cook Islands, after investigation, certify the claims.

- (1) as having been submitted in good faith, within three 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.

14 The Government of New Zealand will take measures to ensure that members of the visiting contingent are aware of their duty and observe the laws and regulations of the Cook Islands.

15 This agreement shall not extend to Niue or Tokelau.

If the foregoing is acceptable to the Government of the Cook Islands, 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.

(A G Simcock)  
New Zealand Representative

26/5/12

Minister of Foreign Affairs



Rarotonga Cook Islands

*Copy sent to Mr Simcock*

2 December 1988

Mr Adrian Simcock  
New Zealand Representative  
Rarotonga

*My dear Representative*

PACIFIC PATROL BOAT HOUSING PROJECT

I write with reference to your letter dated 4 November (your ref 26/5/12) and my response of today's date, together constituting an Exchange of Letters, governing the implementation of the above project.

As agreed during our discussions, I wish to place on record that this Government's agreement in this instance to allow New Zealand authorities to exercise primary criminal jurisdiction over military forces engaged in the above project is without prejudice to the question of whether at international law generally, primary jurisdiction necessarily rests with the sending State.

*Norman George*

Hon Norman George  
Minister of Foreign Affairs



26/5/12

2 December 1988

*Copy sent to Mr. Simcock / Dafa. Co.*  
*[Signature]*

Mr Adrian Simcock  
New Zealand Representative  
RAROTONGA

*My dear Representative,*

I acknowledge the receipt of your Note of the 4th November 1988 which states as follows:

I have the honour to refer to the talks held between officials from New Zealand and the Cook Islands in July 1988 concerning the visit of a contingent of the New Zealand Armed Forces in connection with the Patrol Boat Housing Project to be conducted between 6 September 1988 and 20 January 1989. The purpose of this project is to construct three houses to accommodate the patrol boat advisory team which will be stationed in Rarotonga to support the Cook Islands patrol boat.

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"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 the Patrol Boat Housing Project.



3. A small advance party comprising 3 personnel from the construction team contingent will arrive in Rarotonga on 6 September 1988 to finalise arrangements for the exercise.
4. The Government of the Cook Islands will make available and lease to the Government of New Zealand a suitable block of land for the construction of three prefabricated houses.
5. The Government of the Cook Islands will not levy landing charges against the Government of New Zealand for the use of airport facilities in Rarotonga in connection with the Patrol Boat Housing Project.
6. (a) The Government of the Cook Islands will facilitate the admission of the New Zealand contingent for the purpose of taking part in the Patrol Boat Housing Project.  
  
(b) The following documents will be required to be in the possession of members of the New Zealand contingent for entry into the Cook Islands for purposes of taking part in the Patrol Boat Housing Project.
  - (i) 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;
  - (ii) 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 will not be required by members of the New Zealand contingent for entry into the Cook Islands for purposes of taking part in the Patrol Boat Housing Project.
7. All freight, stores and equipment and construction materials required by the New Zealand contingent for purposes of the project in which they are participating will be given entry free of all duties, taxes and harbour fees 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.
8. The New Zealand contingent will be permitted to take with it upon departure all equipment brought by it into the

Cook Islands for the purpose of the Patrol Boat Housing Project free from export duties and related charges and restrictions.

9. Cook Islands registration will not be required for New Zealand Army vehicles used for the project.
10. New Zealand servicemen may wear uniform in performing official duties in the Cook Islands.
11. The Government of the Cook Islands will grant New Zealand servicemen participating in the Patrol Boat Housing Project exemption from departure tax.
12. The rights of the two Governments with respect to criminal and disciplinary jurisdiction over the New Zealand contingents participating in the Patrol Boat Housing Project will be as follows:
  - (a) The New Zealand Service authorities on behalf of the Government of New Zealand will have the right to exercise in the territory of the Cook Islands all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over all New Zealand servicemen taking part in the patrol Boat Housing Project.
  - (b) The Government of the Cook Islands will have jurisdiction over all New Zealand servicemen taking part in the Patrol Boat Housing Project with respect to offences committed in the territory of the Cook Islands and punishable by the law of the Cook Islands.
  - (c) The New Zealand Service authorities will have the right to exercise exclusive jurisdiction over New Zealand servicemen with respect to offences punishable by the law of New Zealand but not by the law of the Cook Islands.
  - (d) The Government of the Cook islands will have the right to exercise exclusive jurisdiction over all New Zealand servicemen taking part in the Patrol Boat Housing Project 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 will apply:
    - (i) the New Zealand Service authorities will have the primary right to exercise jurisdiction over New Zealand servicemen in relation to:

- a offences solely against the property or security of New Zealand;
  - b offences solely against the person or property of a New Zealand serviceman or servicemen taking part in the Patrol Boat Housing Project;
  - c offences arising out of any act or omission done in the performance of official duty.
- (ii) in the case of any other offences the Government of the Cook Islands will have the primary right to exercise jurisdiction.
- (iii) if the Government having the primary right to exercise jurisdiction under the foregoing paragraphs decides not to exercise jurisdiction, it will notify the other Government as soon as practicable: the Government having primary jurisdiction in any such situation will give sympathetic consideration to a request from the other Government for waiver of jurisdiction.
- (f) The foregoing paragraphs will 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 servicemen taking part in the Patrol Boat Housing Project.
- (g) The New Zealand Service authorities and the Government of the Cook Islands will assist each other in the arrest of New Zealand servicemen taking part in the Patrol Boat Housing Project 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.
- (h) The Government of the Cook Islands will notify promptly the New Zealand Service authorities of the arrest of any New Zealand serviceman taking part in the Patrol Boat Housing Project.
- (i) Where the Government of the Cook Islands has arrested a New Zealand servicemen taking part in the Patrol Boat Housing Project the Government of the Cook Islands will if so requested release him to the custody of the New Zealand Service authorities in

the Cook Islands pending completion of trial proceedings provided that he will, on request, be made available to the Government of the Cook Islands.

- (j) The New Zealand Service authorities and the Government of the Cook Islands will 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.
  - (k) The New Zealand Service authorities and the Government of the Cook Islands will notify each other of the disposal of all cases in which there are concurrent rights to exercise criminal jurisdiction.
  - (l) Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service authorities or by the Government of the Cook Islands, and has been convicted or acquitted (which expressions will include any other final disposal of a charge) he may not be tried again for the same or substantially the same offence by either Government: this paragraph will 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 the Cook Islands.
  - (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 New Zealand serviceman taking part in the Patrol Boat Housing Project has been sentenced under the law of the Cook Islands 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 will be given sympathetic consideration by the Government of the Cook Islands.
13. (a) The two Governments will 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 the Patrol Boat Housing Project, 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 will 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 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 the Cook Islands for purposes of the Patrol Boat Housing Project and where the Government of the Cook Islands, after investigation, certify the claims.

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(ii) as being reasonable in nature; and

(iii) 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

(iv) where they relate to loss of property, as seeking sums which reflect accurately the value of such property immediately prior to such loss.

14. The Government of New Zealand will take measures to ensure that members of the visiting contingent are aware of their duty and observe the laws and regulations of the Cook Islands.

15. This agreement shall not extend to Niue or Tokelau.

I confirm that the foregoing is acceptable to my Government and that your Note and this Confirmatory Note in reply constitute an agreement between our two Governments which shall enter into force from the date of this reply.



Hon Norman George  
MINISTER OF FOREIGN AFFAIRS