



27 October 2004

Hon Tuilaepa Sailele Malielegaoi  
Prime Minister  
and Minister of Foreign Affairs and Trade  
Apia  
SAMOA

Dear Prime Minister

I have the honour to refer to the talks held between officials in Apia in August concerning the visit of a New Zealand Defence Force contingent to Samoa for TUNEX ASTRA 04, to be held over the period 4 – 19 November 2004. The purpose of this activity is to provide continuation training for Royal New Zealand Air Force (RNZAF) Telecommunications personnel in High Frequency (HF) radio communications within a tropical environment.

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

1. The Government of New Zealand shall send a contingent of up to 20 RNZAF personnel to Samoa for the period 4 - 19 November 2004 to take part in TUNEX ASTRA 04. During this period, elements of the Operational Communications and Information Systems Flight from RNZAF Base Auckland will operate in three self-sufficient, geographically-separated teams, executing an established ten-day training schedule. Additionally, an Exercise Control Headquarters will be established at Principal of Paul VI College, Upolu. The contingent will deploy to and from Samoa by RNZAF C130 aircraft on 4 November and 19 November respectively.

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

- a. "New Zealand Contingent" means those armed forces of New Zealand who will be visiting Samoa for the purpose of taking part in TUNEX ASTRA 04.

- b. "New Zealand Service Authorities" means the authorities empowered by the law of New Zealand to exercise command and control over the members of the New Zealand Contingent.
- c. The "Samoa Authorities" means the authorities from time to time designated by the Government of Samoa for the purpose of exercising the powers in relation to which the term is used.
- d. "Material", in relation to the New Zealand Contingent, means all items necessary for the equipment, maintenance, operation and support of the New Zealand Contingent.
- e. "Armed Forces", for the purpose of this Agreement includes personnel of the Samoan Police, Prisons, and Fire Service.

3. The Government of Samoa shall make available the following support to the New Zealand Contingent in accordance with the reconnaissance report:

- a. a minimum of six Samoa Police, Prisons and Fire Service personnel as liaison staff for the New Zealand Contingent;
- b. access to areas detailed at paragraph 4 in order to conduct TUNEX ASTRA 04. Use of the areas shall be in accordance with the regulations laid down by the Government of Samoa; and
- c. A suitable area at the airport to carry out decontamination of Material prior to return to New Zealand.

4. The Government of New Zealand through the NZDF shall provide telecommunications personnel, equipment and materials in order to conduct a communications training exercise from the following locations:

- a. Principal of Paul VI College, Upolu
- b. Asau Airport, Savai'i.
- c. Togitogiga Regional Park, Upolu

5. The Government of Samoa shall not levy any charges against the Government of New Zealand for the use of Samoa transport, accommodation, airport facilities, military or civil facilities, or land, in connection with the conduct of TUNEX ASTRA 04.

6. Samoa Authorities shall facilitate the entry and departure of the New Zealand Contingent to/from Apia and shall provide customs and immigration facilities as required to meet incoming RNZAF aircraft. Members of the New Zealand Contingent shall be permitted to enter and depart from Samoa on the basis of:

- a. a personal identity card issued by the New Zealand Service Authorities 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 the New Zealand Service Authorities certifying to the status of the individual or group as a member of the New Zealand contingent.

7. Passports shall not be required by members of the New Zealand Contingent for entry into Samoa. The Government of Samoa shall grant all members of the New Zealand Contingent exemption from departure tax.

8. The Government of New Zealand shall supply all Combat Ration Packs for the New Zealand Contingent. All Combat Ration Packs shall comply with the agricultural requirements of Samoa Authorities.

9. The New Zealand Contingent may import free of duty Material (including vehicles) for its exclusive use or consumption, provided that a detailed list of all the Material is forwarded to the Samoa Authorities at least one week prior to the commencement of TUNEX ASTRA 04 in Samoa. The Samoa Authorities reserve the right to reject the importation into Samoa of any materials provided in the list of Materials, if the importation of such materials are contrary to the laws of Samoa. Official documents of the New Zealand contingent shall not be subject to customs inspection.

10. Material imported free of duty under paragraph 9 may be re-exported freely.

11. For the purpose of command and control of the New Zealand Contingent, the Government of Samoa shall permit the New Zealand Contingent to establish and operate HF and VHF radio stations, using frequencies approved by the Samoa Authorities.

12. Members of the New Zealand Contingent may wear uniform when on official duty in Samoa.

13. The rights of the two Governments with respect to criminal and disciplinary jurisdiction over the New Zealand Contingent shall be as follows:

- a. The New Zealand Service Authorities shall have the right to exercise within Samoa all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over the members of the New Zealand Contingent, and exclusive jurisdiction over the members of the New Zealand Contingent with respect to offences punishable by the law of New Zealand but not by the law of Samoa.
- b. The Samoa Authorities shall have the right to exercise jurisdiction over the members of the New Zealand Contingent with respect to offences committed

within the territory of Samoa and punishable by the law of Samoa, and the right to exercise exclusive jurisdiction over the members of the New Zealand Contingent with respect to offences punishable by the law of Samoa 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 Service Authorities shall have the primary right to exercise jurisdiction over members of the New Zealand Contingent in relation to:
  - (a) offences against the security of New Zealand; including acts of treason, sabotage, espionage or violation of any law relating to the protection of the official information of New Zealand;
  - (b) offences solely against the property of New Zealand;
  - (c) offences solely against the person or property of another member of the New Zealand Contingent; and
  - (d) offences arising out of any act or omission done in the performance of an official duty.
- (2) In the case of any other offences committed within the territory of Samoa, the Samoa Authorities shall have the primary right to exercise jurisdiction.
- (3) If the authorities having the primary right to exercise jurisdiction decide not to do so, they shall notify the other authorities as soon as practicable.
- (4) The authorities having the primary right of jurisdiction shall give sympathetic consideration to a request from the other authorities for a waiver of their right where those other authorities consider such a waiver to be of particular importance.
- (5) Where the Samoa Authorities have primary right of jurisdiction they shall give sympathetic consideration to a request from the New Zealand Service Authorities for a waiver of that right where suitable punishment can be imposed under the Service law of New Zealand.
- (6) The foregoing paragraphs shall not confer any right on the New Zealand Service Authorities to exercise jurisdiction over persons who are nationals of or ordinarily resident in Samoa, unless they are part of the New Zealand Contingent.

d. The New Zealand Service Authorities and the Samoa Authorities shall assist each other in arresting members of the New Zealand Contingent, where such arrest is necessary to allow the exercise of jurisdiction provided for in the above paragraphs and, subject to paragraphs e. and f. of this clause, in handing them over to the Authorities which are to exercise jurisdiction in accordance with the above paragraphs.

e. The Samoa Authorities shall promptly notify the New Zealand Service Authorities of the arrest of any member of the New Zealand Contingent.

f. Where the Samoa authorities have arrested a member of the New Zealand Contingent taking part in TUNEX ASTRA 04, the Samoa Authorities shall if so requested release him or her to the custody of the New Zealand Service Authorities in Samoa pending completion of trial proceedings provided that he or she shall, on request, be made available to the Samoa Authorities.

g. The New Zealand Service Authorities and the Samoa Authorities shall assist each other in the carrying out of all necessary investigations into offences and in the collection and production of evidence relating to an offence.

h. The New Zealand Service Authorities and the Samoa Authorities shall notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.

i. Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service Authorities or by a Samoa court, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge), he or she may 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 or dealing with a New Zealand Serviceperson for any violation of rules of discipline arising from an act or omission which constituted an offence for which he or she was tried under Samoa law.

j. Where a member of the New Zealand Contingent is prosecuted under the jurisdiction of Samoa he or she shall be entitled to be tried in accordance with generally accepted standards for criminal procedure, including but not limited to, the right:

- (1) to be tried without undue delay;
- (2) if he or she considers it necessary, to have the services of a competent interpreter;
- (3) to communicate with a representative of New Zealand, and where the rules of the court permit, to have such a representative at his or her trial;
- (4) to be presumed innocent until proven guilty according to law;

(5) to have legal representation of his or her own choice for his or her defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Samoa in which he or she is being prosecuted; and

(6) to be present at the trial and to present a defence.

k. The New Zealand Service Authorities shall notify the Samoa Authorities if any member of the New Zealand Contingent absents himself or herself without approved leave for more than 48 hours.

14. Each Government shall waive any claim against the other for:

a. damage to, or loss of, property owned or used by its armed forces arising out of an act or omission of any member of, or other person in the service of, the armed forces of the other state done in the performance of official duty;

b. damages for personal injury or death suffered by:

(1) a member or other person in the service of the Samoan armed forces; or

(2) a member of the New Zealand Contingent.

15. The two Governments shall consult on the settlement of claims by one against the other arising out of damage to or loss of State property other than property owned or used by their armed forces, arising out of an act or omission of any member or other person in the service of the armed forces of the other State done in the performance of official duty where such damage or loss has occurred in the course of TUNEX ASTRA 04.

16. Except in the case of claims arising under clause 15 of this Agreement, any claim:

a. made by, or on behalf of, a third party in Samoa, arising out of an act or omission of a member of the New Zealand Contingent done in the performance of official duty, which results in:

(1) personal injury to or death of a third party; or

(2) damage to or loss of property of any third party in Samoa; or

b. made by, or on behalf of, a member of the New Zealand Contingent in respect of any act or omission of a third party in Samoa which results in:

(1) personal injury to, or death of, any member; or

(2) damage to, or loss of, the property of a member;

shall be dealt with by Samoa in accordance with the procedure in clause 17 of this Agreement.

17. The procedure for settling the third party claims referred to in clause 16.b. of this Agreement shall be as follows:

a. Claims shall be filed, considered and settled or adjudicated in accordance with the law of Samoa.

b. Where:

(1) liability to pay compensation is established by the competent Samoa Authority in accordance with the law of Samoa; or

(2) it is acknowledged that liability to pay compensation would be established in accordance with the law of Samoa;

the Samoa Authorities shall settle such claims by paying such reasonable compensation as the claimant is entitled to under the law of Samoa. Such payment shall be a binding and conclusive discharge of the claim.

c. Where compensation has been paid, or is to be paid under the terms of this Agreement, Samoa shall communicate the amount of compensation to the Government of New Zealand together with full particulars of the basis for such compensation. The Samoa Authorities shall discuss with and observe the reasonable instructions of the New Zealand Service Authorities as to the defence or settlement of the claim;

d. the Samoa Authorities shall not settle the claim without the prior consent of the New Zealand Service Authorities, which shall not be unreasonably withheld;

e. the cost incurred in satisfying the claim, including the reasonable costs of the Samoa Authorities in dealing with the claim, shall be apportioned between the Parties, as follows:

(1) where New Zealand is solely liable in respect of the claim New Zealand shall meet the costs of the claim in full; and

(2) where the Parties are jointly liable in respect of the claim:

(i) where it is possible to apportion liability between the Parties, each Party shall meet the portion of the costs of the claim corresponding to the degree of the Party's liability; or

(ii) where it is not possible to apportion liability between the Parties, the costs of the claim shall be borne equally by the Parties.

f. This clause shall not apply to:

- (1) Contractual claims against a member of the New Zealand Contingent in their private capacity which will be subject to the normal legal processes of Samoa; or
- (2) Claims arising out of the use of any vehicle of the New Zealand Contingent which is covered by an insurance policy taken out in accordance with the law of Samoa.

18. The New Zealand Services Authorities and the Samoa Authorities shall co-operate in the procurement of evidence for a fair hearing and disposal of claims.

19. The Government of New Zealand shall take appropriate measures to ensure that the New Zealand Contingent:

- a. Respect the laws and regulations of Samoa;
  - b. Refrain from any activity inconsistent with the spirit of this Agreement;
- and
- c. Refrain from abusing any privileges granted under this Agreement.

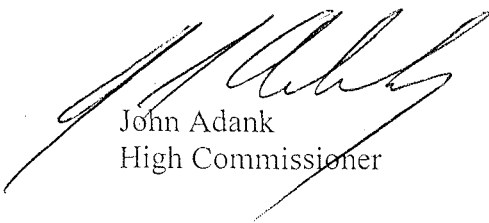
20. Except as provided in this Agreement no claim for immunity by a member of the New Zealand Contingent based on his or her status as a servant or employee of New Zealand may, in respect of any claim, proceeding or action, be raised in a court of Samoa.

21. Any matter not covered by this Agreement shall be the subject of mutually acceptable arrangements made from time to time between the parties.

If the foregoing is acceptable to the Government of Samoa, I have the honour to propose this Letter, 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.

Yours sincerely



John Adank  
High Commissioner





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*Office of the Prime Minister  
Apia, Samoa*

28 October 2004

His Excellency Mr John Adank  
High Commissioner of New Zealand  
New Zealand High Commission  
Apia  
SAMOA

Dear High Commissioner

I have the honour to refer to your letter of 27 October, the contents of which read as follows:

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- b. The Samoa Authorities shall have the right to exercise jurisdiction over the members of the New Zealand Contingent with respect to offences committed within the territory of Samoa and punishable by the law of Samoa, and the right to exercise exclusive jurisdiction over the members of the New Zealand Contingent with respect to offences punishable by the law of Samoa 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 Service Authorities shall have the primary right to exercise jurisdiction over members of the New Zealand Contingent in relation to:
    - (a) offences against the security of New Zealand; including acts of treason, sabotage, espionage or violation of any law relating to the protection of the official information of New Zealand;
    - (b) offences solely against the property of New Zealand;
    - (c) offences solely against the person or property of another member of the New Zealand Contingent; and
    - (d) offences arising out of any act or omission done in the performance of an official duty.
  - (2) In the case of any other offences committed within the territory of Samoa, the Samoa Authorities shall have the primary right to exercise jurisdiction.
  - (3) If the authorities having the primary right to exercise jurisdiction decide not to do so, they shall notify the other authorities as soon as practicable.
  - (4) The authorities having the primary right of jurisdiction shall give sympathetic consideration to a request from the other authorities

for a waiver of their right where those other authorities consider such a waiver to be of particular importance.

- (5) Where the Samoa Authorities have primary right of jurisdiction they shall give sympathetic consideration to a request from the New Zealand Service Authorities for a waiver of that right where suitable punishment can be imposed under the Service law of New Zealand.
- (6) The foregoing paragraphs shall not confer any right on the New Zealand Service Authorities to exercise jurisdiction over persons who are nationals of or ordinarily resident in Samoa, unless they are part of the New Zealand Contingent.

d. The New Zealand Service Authorities and the Samoa Authorities shall assist each other in arresting members of the New Zealand Contingent, where such arrest is necessary to allow the exercise of jurisdiction provided for in the above paragraphs and, subject to paragraphs e. and f. of this clause, in handing them over to the Authorities which are to exercise jurisdiction in accordance with the above paragraphs.

e. The Samoa Authorities shall promptly notify the New Zealand Service Authorities of the arrest of any member of the New Zealand Contingent.

f. Where the Samoa authorities have arrested a member of the New Zealand Contingent taking part in TUNEX ASTRA 04, the Samoa Authorities shall if so requested release him or her to the custody of the New Zealand Service Authorities in Samoa pending completion of trial proceedings provided that he or she shall, on request, be made available to the Samoa Authorities.

g. The New Zealand Service Authorities and the Samoa Authorities shall assist each other in the carrying out of all necessary investigations into offences and in the collection and production of evidence relating to an offence.

h. The New Zealand Service Authorities and the Samoa Authorities shall notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.

i. Where an accused has been tried in accordance with the preceding paragraphs by the New Zealand Service Authorities or by a Samoa court, and has been convicted or acquitted (which expressions shall include any other final disposal of a charge), he or she may 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 or dealing with a New Zealand Serviceperson for any violation of rules of discipline arising from an act

or omission which constituted an offence for which he or she was tried under Samoa law.

j. Where a member of the New Zealand Contingent is prosecuted under the jurisdiction of Samoa he or she shall be entitled to be tried in accordance with generally accepted standards for criminal procedure, including but not limited to, the right:

- (1) to be tried without undue delay;
- (2) if he or she considers it necessary, to have the services of a competent interpreter;
- (3) to communicate with a representative of New Zealand, and where the rules of the court permit, to have such a representative at his or her trial;
- (4) to be presumed innocent until proven guilty according to law;
- (5) to have legal representation of his or her own choice for his or her defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Samoa in which he or she is being prosecuted; and
- (6) to be present at the trial and to present a defence.

k. The New Zealand Service Authorities shall notify the Samoa Authorities if any member of the New Zealand Contingent absents himself or herself without approved leave for more than 48 hours.

14. Each Government shall waive any claim against the other for:

a. damage to, or loss of, property owned or used by its armed forces arising out of an act or omission of any member of, or other person in the service of, the armed forces of the other state done in the performance of official duty;

b. damages for personal injury or death suffered by:

- (1) a member or other person in the service of the Samoan armed forces; or
- (2) a member of the New Zealand Contingent.

15. The two Governments shall consult on the settlement of claims by one against the other arising out of damage to or loss of State property other than property owned or used by their armed forces, arising out of an act or omission

of any member or other person in the service of the armed forces of the other State done in the performance of official duty where such damage or loss has occurred in the course of TUNEX ASTRA 04.

16. Except in the case of claims arising under clause 15 of this Agreement, any claim:

a. made by, or on behalf of, a third party in Samoa, arising out of an act or omission of a member of the New Zealand Contingent done in the performance of official duty, which results in:

- (1) personal injury to or death of a third party; or
- (2) damage to or loss of property of any third party in Samoa; or

b. made by, or on behalf of, a member of the New Zealand Contingent in respect of any act or omission of a third party in Samoa which results in:

- (1) personal injury to, or death of, any member; or
- (2) damage to, or loss of, the property of a member;

shall be dealt with by Samoa in accordance with the procedure in clause 17 of this Agreement.

17. The procedure for settling the third party claims referred to in clause 16.b. of this Agreement shall be as follows:

a. Claims shall be filed, considered and settled or adjudicated in accordance with the law of Samoa.

b. Where:

- (1) liability to pay compensation is established by the competent Samoa Authority in accordance with the law of Samoa; or
- (2) it is acknowledged that liability to pay compensation would be established in accordance with the law of Samoa;

the Samoa Authorities shall settle such claims by paying such reasonable compensation as the claimant is entitled to under the law of Samoa. Such payment shall be a binding and conclusive discharge of the claim.

c. Where compensation has been paid, or is to be paid under the terms of this Agreement, Samoa shall communicate the amount of compensation to the Government of New Zealand together with full particulars of the basis for such

compensation. The Samoa Authorities shall discuss with and observe the reasonable instructions of the New Zealand Service Authorities as to the defence or settlement of the claim;

d. the Samoa Authorities shall not settle the claim without the prior consent of the New Zealand Service Authorities, which shall not be unreasonably withheld;

e. the cost incurred in satisfying the claim, including the reasonable costs of the Samoa Authorities in dealing with the claim, shall be apportioned between the Parties, as follows:

- (1) where New Zealand is solely liable in respect of the claim New Zealand shall meet the costs of the claim in full; and
- (2) where the Parties are jointly liable in respect of the claim:
  - (i) where it is possible to apportion liability between the Parties, each Party shall meet the portion of the costs of the claim corresponding to the degree of the Party's liability; or
  - (ii) where it is not possible to apportion liability between the Parties, the costs of the claim shall be borne equally by the Parties.

f. This clause shall not apply to:

- (1) Contractual claims against a member of the New Zealand Contingent in their private capacity which will be subject to the normal legal processes of Samoa; or
- (2) Claims arising out of the use of any vehicle of the New Zealand Contingent which is covered by an insurance policy taken out in accordance with the law of Samoa.

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19. The Government of New Zealand shall take appropriate measures to ensure that the New Zealand Contingent:

- a. Respect the laws and regulations of Samoa;



b. Refrain from any activity inconsistent with the spirit of this Agreement;

and

c. Refrain from abusing any privileges granted under this Agreement.

20. Except as provided in this Agreement no claim for immunity by a member of the New Zealand Contingent based on his or her status as a servant or employee of New Zealand may, in respect of any claim, proceeding or action, be raised in a court of Samoa.

21. Any matter not covered by this Agreement shall be the subject of mutually acceptable arrangements made from time to time between the parties.

If the foregoing is acceptable to the Government of Samoa, I have the honour to propose this Letter, 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.”

I have the further honour to confirm that the contents of your letter are acceptable to the Government of Samoa. Accordingly, your letter along with this letter of reply shall constitute an agreement between our two Governments, which shall enter into effect as from the date of this letter of reply.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Tuilaepa Sailele Malielegaoi', written in a cursive style.

Tuilaepa Sailele Malielegaoi  
Prime Minister and Minister of Foreign Affairs and Trade