



EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF NIUE FOR THE VISIT BY A NEW ZEALAND DEFENCE FORCE CONTINGENT TO NIUE FOR EXERCISE TROPIC TWILIGHT

I have the honour to refer to the talks held between Niue and New Zealand officials concerning the visit of a New Zealand Defence Force contingent to Niue for the purpose of conducting Exercise TROPIC TWILIGHT, to be held over the period 20 May to 17 July 2005. The aim of the exercise is to enable NZDF personnel to practise deploying and operating in a tropical environment. The NZDF personnel will primarily be undertaking community action tasks, as well as conducting repair and reconstruction work on the New Zealand High Commission.

This Agreement records the understanding reached between the Government of New Zealand and the Government of Niue relating to this deployment.

Scope of the Exercise

1. The exercise will take place from 20 May to 17 July 2005 and will involve a contingent of up to 130 NZDF personnel. For the purpose of this exercise, personnel in this contingent who are not New Zealand citizens are subject to the same benefits and commitments as New Zealand citizen personnel.

Respect for Local Law

2. The NZDF authorities shall take appropriate measures to ensure that NZDF personnel respect the laws of Niue and abstain from any activity inconsistent with this Agreement.

Uniforms, Equipment and Supplies

3. NZDF personnel shall be permitted to wear military uniform and carry such equipment in Niue as may be required to perform their duties in relation to this Agreement.

4. 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 Niue Authorities.

Command and Administration

5. NZDF personnel participating in activities under this Agreement shall remain under the exclusive command and administrative control of the NZDF at all times.
6. The senior NZDF member, designated as the New Zealand Senior National Officer (NZSNO), will exercise command over NZDF personnel participating under this Agreement.

Criminal and Disciplinary Jurisdiction

7. The arrangements between the Parties with respect to criminal and disciplinary jurisdiction over the NZDF personnel shall be as follows:
 - a. The New Zealand Service authorities shall exercise, within Niue, all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over NZDF personnel with respect to offences relating to military discipline and those offences punishable by the law of New Zealand but not by the law of Niue.
 - b. The Niue authorities shall exercise criminal jurisdiction over NZDF personnel with respect to offences committed within the territory of Niue and punishable by the law of Niue, including offences punishable by the law of Niue but not by the law of New Zealand.
 - c. In cases where the right to exercise criminal 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 NZDF 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 official information of New Zealand.
 - (b) Offences solely against the property of New Zealand;
 - (c) Offences solely against the person or property of other NZDF personnel;
 - (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 Niue, the Niue authorities shall have the primary right to exercise jurisdiction

- (3) If the authorities of the Party having the primary right to exercise jurisdiction decide not to do so, they shall notify the authorities of the other Party as soon as practicable.
- (4) The authorities, having the primary right of jurisdiction, shall give sympathetic consideration to a request from the authorities of the other Party for a waiver of their right where those other authorities consider such a waiver to be of particular importance.
- (5) Where the Niue authorities have primary right of jurisdiction they shall give sympathetic consideration to a request for waiver of that right where suitable punishment can be imposed under the service law of New Zealand.

Claims and Liability

8. The Parties shall each 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 Parties and which is 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 Niue Government; or

(2) NZDF personnel while on official duty in Niue.

9. Any claim which is made by, or on behalf of, a third party in Niue arising out of an act or omission of one of the NZDF personnel done in good faith in the performance of official duty, which results in:

a. Personal injury to or death of a third party; or

b. Damage to or loss of property of any third party in Niue;

shall be received, settled and paid for by Niue as if the act or omission in question had been that of a member of the Niue Government.

Entry, Exit and Customs

10. The Authorities of Niue shall facilitate the entry of NZDF personnel into, and their departure from, Niue.
11. NZDF personnel deployed under this Agreement shall comply with all entry and exit requirements of Niue. Any customs charges arising from vehicles, aircraft, materiel or equipment brought into the country by NZDF personnel will be waived.
12. Subject to compliance with the formalities established by the Authorities of Niue relating to entry and departure, NZDF personnel deployed under this Agreement shall be exempt from any requirement to apply for a visa or entry permit on entering and departing Niue.
13. The Authorities of Niue shall permit NZDF personnel deployed under this Agreement to enter into or depart from Niue on official duty, on the basis of:
 - a. A personal identity card issued by the Service Authorities of the NZDF showing full name, date of birth, rank and service number, service and photograph; and
 - b. An individual or collective travel document issued by the Service Authorities of the NZDF identifying the individual or group as a member or members of the NZDF and authorising the travel.
14. Nothing in this Agreement shall confer upon any member of the NZDF any right to permanent residence or domicile in Niue.
15. If the removal from Niue of a member of the NZDF is requested by the authorities of Niue or otherwise required by the law of Niue the NZDF Service Authorities shall:
 - a. Promptly take reasonable steps to effect the departure of that person from the territory of Niue; and
 - b. Meet any reasonable costs incurred by the Authorities of Niue in removing that person from the territory of Niue.
16. Official documents under official seal comprising the official communications between the New Zealand authorities and the NZDF will not be subject to customs inspection. The package shall be accompanied by a certificate, which states that only official documents are enclosed. Samples of the official seals shall be lodged with the authorities of Niue.
17. Members of the NZDF may import free of Duty any goods for the exclusive and official use by the NZDF under this Agreement. Goods which have been imported free of Duty under this paragraph may be freely Exported.

Security

18. Niue shall take such steps as may be necessary to ensure the security of NZDF personnel, vehicles, aircraft, equipment and materiel that are present in Niue under this Agreement.

Driving Licences and Official Vehicles

19. The authorities of Niue shall accept as valid, without a driving test or fee, the driving permit or licence issued by the NZDF Service authorities for the purpose of driving vehicles by NZDF personnel in the course of their official duties.

20. Vehicles of the NZDF, excluding vehicles hired in Niue, shall carry in addition to their registration number issued by the NZDF, a distinctive nationality mark but will not be required to be registered by the authorities of Niue.

Communications

21. NZDF personnel deployed under this Agreement may in accordance with arrangements made with the authorities of Niue, operate communications systems for official communications. The operation of such systems shall not be exercised in a manner likely to interfere with communication systems operated by public utilities in Niue or licensed by the authorities of Niue.

Access to Medical Facilities

22. The Authorities of Niue shall permit NZDF personnel deployed under this Agreement access to medical and surgical facilities as required.

Settlement of Differences

23. Any differences concerning the interpretation or application of this Agreement shall be resolved amicably between the Parties and will not be referred to any national or international tribunal or any other third party for settlement.

Matters Not Covered by this Agreement

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

Amendment and Termination

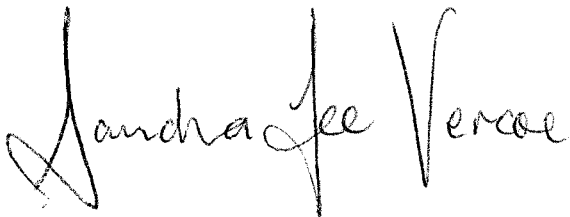
25. This Agreement may be reviewed and amended at any time with the mutual consent of the Participants.

26. This Agreement shall remain in effect until the completion of the exercise and all NZDF personnel and equipment have departed from Niue at which time it shall automatically be terminated, except for the provision as to claims, which shall continue to have effect until the last claim is settled. It may also be terminated at any time, except for the provision as to claims, which will continue to have effect until the last claim is settled, by the written consent of both Parties, or by either Party providing written notice to the other Party.

Effective Date and Duration

27. This Agreement shall be effective from the date of its acceptance by both the Government of New Zealand and the Government of Niue, and shall remain in effect until terminated in accordance with paragraph 26.

28. If the foregoing is acceptable to the Government of Niue, I have the honour to propose that 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.

A handwritten signature in cursive script that reads "Sandra Lee-Vercoe". The signature is written in black ink and is positioned above the printed name and title.

Sandra Lee-Vercoe
High Commissioner



FAKATUFONO NIUE
Office of the Secretary to Government
Premiers Department

18th May 2005

HE Hon. Sandra Lee Vercoe
High Commissioner
New Zealand High Commission
Alofi, Niue

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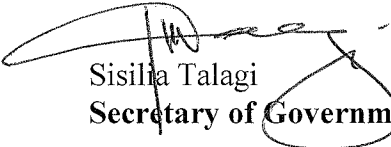
Dear Excellency,

I acknowledge receipt of the Exchange of letters as titled above, today, the 18th May 2005. The Exchange of letters, as titled above, reflects the outcome of talks, concerning the NZDF's Exercise Tropic Twilight in Niue, over the period 20th May to 17th July 2005.

On behalf of the Government of Niue, I wish to convey that we are looking forward to hosting the NZDF's exercise Tropic Twilight, as well as the various civil duties that are planned to assist Niue.

We will endeavour to make their short stay a memorable one.

Yours sincerely,


Sisilia Talagi
Secretary of Government