



New Zealand Treaty Series 2010, No.18
Ministry of Foreign Affairs and Trade

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE INDEPENDENT STATE OF TUVALU CONCERNING
THE TEMPORARY STAY OF MEMBERS OF THE NEW ZEALAND ARMED
FORCES ON THE TERRITORY OF THE INDEPENDENT STATE OF TUVALU
(TUVALU-NEW ZEALAND VISITING FORCES AGREEMENT)

Suva, 21 June 2010
[Entered into force for New Zealand 21 June 2010]

Presented to the House of Representatives

AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE INDEPENDENT STATE OF TUVALU CONCERNING THE
TEMPORARY STAY OF MEMBERS OF THE NEW ZEALAND ARMED FORCES ON
THE TERRITORY OF THE INDEPENDENT STATE OF TUVALU
(TUVALU - NEW ZEALAND VISITING FORCES AGREEMENT)

The Government of New Zealand

And

the Government of the Independent State of Tuvalu:

(hereinafter referred to as “the Parties”)

Recognising the close and friendly relations between them, and New Zealand’s historical support to the Independent State of Tuvalu (“Tuvalu”);

Welcoming the possibility of regular exercises by the New Zealand Armed Forces in the territory of Tuvalu;

Having regard to the risks in the Pacific of natural disasters and the possible nature of a New Zealand response;

Acknowledging the need to regulate the conditions for the temporary stay of members of the New Zealand Armed Forces in Tuvalu;

Agree as follows:

Article 1

DEFINITION

New Zealand contingent means any one or more members of the New Zealand Armed Forces who are given permission to enter and remain within the sovereign territory of Tuvalu under Article 3 of this Agreement, including any members of a civilian component of a New Zealand contingent who are not nationals of or ordinarily resident in Tuvalu.

Article 2

SUBJECT OF THE AGREEMENT

1. This Agreement regulates the entry, departure and temporary stay of New Zealand contingents on the sovereign territory of Tuvalu.
2. Unless this Agreement stipulates otherwise, the entry, departure and temporary stay of a New Zealand contingent is subject to the domestic law and regulations of Tuvalu.

Article 3***TYPE, SCOPE AND DURATION OF STAY***

1. The competent authorities of Tuvalu may give permission in advance for any New Zealand contingent to enter and stay temporarily within the territory of Tuvalu for the purpose of any operation, training, exercise or assistance to the Government of Tuvalu.
2. Details on the type, scope and duration of a given stay shall be mutually determined between the competent authorities of the Parties in a specific arrangement.

Article 4***CONDITIONS FOR ENTRY, DEPARTURE AND STAY***

1. A New Zealand contingent may:
 - (a) Enter the territory of Tuvalu in vessels or aircraft, and remain on or over this territory in accordance with an arrangement made under Article 3(2) of this Agreement;
 - (b) Disembark land vehicles on to the territory of Tuvalu;
 - (c) Wear military uniform while on duty; and
 - (d) Possess and carry weapons during its stay on the territory of Tuvalu if necessary for the official purpose of its stay.
2. If any weapons or vehicles are imported or brought into Tuvalu under this Agreement:
 - (a) Any licences or permits required shall be granted in accordance with the law of Tuvalu; and
 - (b) Other details relating to the use of vehicles and the possession and carriage of weapons by a New Zealand contingent on the territory of Tuvalu shall be mutually determined;

in accordance with a specific arrangement to be entered into between the competent authorities of the Parties.
3. The competent authorities of Tuvalu shall:
 - (a) Facilitate the entry and departure of any New Zealand contingent from a place or places mutually determined by the Parties; and
 - (b) Provide customs and immigration facilities to meet vessels and aircraft arriving in Tuvalu with members of the New Zealand contingent.
4. The Government of Tuvalu shall not levy any charges against the Government of New Zealand for the use of land, facilities or services by a New Zealand contingent unless such charges are mutually determined between the competent authorities of the Parties in a specific arrangement.

5. A New Zealand contingent shall be permitted to enter and depart from Tuvalu on the basis of:
 - (a) A personal identity card issued by the New Zealand Defence Force showing the full name, date of birth, rank, service number, service and photograph of the holder; and
 - (b) An individual or collective movement order issued by the New Zealand Defence Force certifying the status of the individual or group as a New Zealand contingent or member of that contingent.
6. Passports shall not be required by a New Zealand contingent for entry into Tuvalu. The Government of Tuvalu shall grant any New Zealand contingent exemption from departure tax.
7. A New Zealand contingent may import into Tuvalu, free of duty, any materiel which is necessary for the equipment, maintenance, operation and support of the New Zealand contingent, provided that a detailed list of all the materiel is provided to the Tuvalu authorities at least one week before the arrival of a New Zealand contingent, or, in the case of emergency assistance under Article 12, as soon as practically possible. The Tuvalu authorities reserve the right to reject the importation into Tuvalu of any materials provided in the list of materiel, if the importation of such materials is contrary to the laws of Tuvalu.
8. Any materiel imported under paragraph 7 of this Article may be re-exported freely. The competent authorities of the Parties shall mutually determine the customs and quarantine inspection requirements for any materiel imported under paragraph 7 of this Article in a specific arrangement, except that any official documents or classified material held by the New Zealand contingent shall not be subject to inspection. The status of any official documents or classified material brought into Tuvalu by a New Zealand contingent shall be determined and certified for the purposes of this paragraph by the senior officer of the contingent.

Article 5

CRIMINAL AND DISCIPLINARY JURISDICTION

1. The competent authorities of the New Zealand Defence Force shall have the right to exercise within Tuvalu all criminal and disciplinary jurisdiction conferred on them by the law of New Zealand over a New Zealand contingent, including exclusive jurisdiction over the New Zealand contingent with respect to offences punishable by the law of New Zealand but not by the law of Tuvalu.
2. The competent authorities of Tuvalu shall have the right to exercise jurisdiction over a New Zealand contingent with respect to offences committed within the territory of Tuvalu and punishable by the law of Tuvalu, including the right to exercise exclusive jurisdiction over the New Zealand contingent with respect to offences punishable by the law of Tuvalu but not by the law of New Zealand.

3. In cases where the right to exercise jurisdiction is concurrent, the following rules shall apply:
 - (a) The competent authorities of the New Zealand Defence Force shall have the primary right to exercise jurisdiction over a New Zealand contingent in relation to:
 - (i) 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;
 - (ii) Offences solely against the property of New Zealand;
 - (iii) Offences solely against the person or property of another member of the New Zealand contingent; and
 - (iv) Offences arising out of any act or omission done in the performance of an official duty.
 - (b) In the case of any other offences committed within the territory of Tuvalu, the competent authorities of Tuvalu shall have the primary right to exercise jurisdiction.
 - (c) 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.
 - (d) 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.
 - (e) Nothing in Article 5(3) of this Agreement confers any right on the competent authorities of the New Zealand Defence Force to exercise jurisdiction over persons who are nationals of or ordinarily resident in Tuvalu, unless they are part of a New Zealand contingent.
4. The competent authorities of Tuvalu and the New Zealand Defence Force shall:
 - (a) Assist each other in arresting members of a New Zealand contingent, where such arrest is necessary to allow the exercise of jurisdiction provided for in this Article and, subject to paragraphs 5 and 6 of this Article, in handing them over to the authorities which are to exercise jurisdiction.
 - (b) Assist each other in carrying out all necessary investigations into offences and in the collection and production of evidence relating to any offence; and
 - (c) Notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.
5. The competent authorities of Tuvalu shall promptly notify the competent authorities of the New Zealand Defence Force of the arrest of any member of a New Zealand contingent.
6. Where the competent authorities of Tuvalu arrest a member of a New Zealand contingent, those authorities shall, if so requested, release him or her to the custody of the New Zealand contingent in Tuvalu pending completion of any trial proceedings,

provided that the arrested person shall, on request, be made available to the competent authorities of Tuvalu.

7. Where an accused has been tried in accordance with this Article by a New Zealand military tribunal, he or she may not be tried again for substantially the same offence by any court of Tuvalu.
8. Where a member of a New Zealand contingent is prosecuted under the jurisdiction of Tuvalu, he or she shall be entitled as a minimum to:
 - (a) Enjoy the rights guaranteed by Article 14 of the *International Covenant on Civil and Political Rights*, opened for signature in New York on 19 December 1966; and
 - (b) 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.
9. The New Zealand Defence Force shall notify the competent authorities of Tuvalu if any member of a New Zealand contingent absents himself or herself without leave for more than 48 hours.

Article 6

TELECOMMUNICATIONS

1. A New Zealand contingent may, in so far as this is necessary to achieve the purpose of its stay in Tuvalu, set up and operate temporary telecommunications facilities, including radio systems. The operation of radio systems by the New Zealand contingent in Tuvalu shall be subject to the approval of appropriate frequencies by the competent authorities of Tuvalu.
2. A New Zealand contingent shall take all necessary measures to avoid interference with telecommunication networks in Tuvalu by their own telecommunications or other electrical installations. The competent authorities of Tuvalu shall take all lawful measures necessary to avoid interference with the telecommunications facilities of the New Zealand contingent by telecommunications or other electrical installations operated in Tuvalu.

Article 7

OPERATION OF NEW ZEALAND DEFENCE FORCE VEHICLES, WARSHIPS, AND USE OF AIRFIELDS IN TUVALU

1. All vehicles used by a New Zealand contingent shall be registered and licensed by the appropriate competent authority of New Zealand. These vehicles shall carry a number plate and a clear nationality mark.
2. A New Zealand contingent shall be subject to the traffic laws and regulations of Tuvalu, except that the New Zealand Defence Force may apply its own internal standards to the design, construction and equipment of motor vehicles, trailers, vessels and aircraft. Compliance with traffic laws and regulations shall be monitored by the competent

authorities of Tuvalu in conjunction with the competent authorities of the New Zealand Defence Force.

3. Driving licences or other permits issued to the members of a New Zealand contingent by a New Zealand authority, authorising the operation of service vehicles, vessels and aircraft, shall also be valid for the operation of such vehicles, vessels or aircraft on the territory of Tuvalu.
4. Driving licences for service vehicles shall also authorise, to the extent that this is permissible under New Zealand law, the operation of corresponding private vehicles.
5. The warships of a New Zealand contingent shall be granted entry into the territorial waters of Tuvalu, and shall be free to operate within the territorial waters of Tuvalu to the extent mutually determined between the competent authorities of the Parties in a specific arrangement.
6. Unless otherwise mutually agreed by the Parties, the Government of Tuvalu shall grant the warships of a New Zealand contingent an exemption from any charges or taxes that may be incurred as a result of using any port facilities.
7. Except in emergencies, a New Zealand contingent may operate military aircraft at civilian airfields in Tuvalu only to the extent mutually determined between the competent authorities of the Parties in a specific arrangement.

Article 8

SETTLEMENT OF CLAIMS BETWEEN THE PARTIES

1. Each Party shall waive any claim against the other for:
 - (a) Damage to, or loss of, property owned or used by its armed or police forces arising out of an act or omission of any member of, or other person in the service of, the armed or police forces of the other Party done in the performance of official duty;
 - (b) Damages for personal injury or death suffered by:
 - (i) A member or other person in the service of the Tuvalu Police Force; or
 - (ii) A member of a New Zealand contingent.
2. If a Party ("Claimant Party") has a claim against the other Party ("Respondent Party") arising out of damage to or loss of the Claimant Party's property (other than property owned or used by the Claimant Party's armed or police forces), which arises out of an act or omission of any member or other person in the service of the armed or police forces of the Respondent Party done in the performance of official duty, the Claimant Party shall consult with the Respondent Party for the settlement of that claim.

Article 9***SETTLEMENT OF THIRD PARTY CLAIMS***

1. This Article shall apply to any claim:
 - (a) Made by, or on behalf of, a third party in Tuvalu, arising out of an act or omission of a member of a New Zealand contingent done in the performance of official duty, which results in:
 - (i) Personal injury to or the death of a third party; or
 - (ii) Damage to or loss of property of any third party in Tuvalu; or
 - (b) Made by, or on behalf of, a member of a New Zealand contingent in respect of any act or omission of a third party in Tuvalu which results in:
 - (i) Personal injury to, or the death of, that member; or
 - (ii) Damage to, or loss of, the property of that member.
2. Any claim to which this Article applies shall be filed with the competent authorities of Tuvalu and considered, settled or adjudicated in accordance with the law of Tuvalu.
3. Where:
 - (a) Liability to pay compensation is established by the competent authorities of Tuvalu in accordance with the law of Tuvalu; or
 - (b) It is acknowledged by both Parties that liability to pay compensation would be established in accordance with the law of Tuvalu;

the competent authorities of Tuvalu shall settle such claims by paying such reasonable compensation as the claimant is entitled to under the law of Tuvalu. Such payment shall be a binding and conclusive discharge of the claim.
4. Where compensation has been paid, or is to be paid under the terms of this Agreement, the competent authorities of Tuvalu shall communicate the amount of compensation to the New Zealand Defence Force together with full particulars of the basis for such compensation. The competent authorities of Tuvalu shall discuss with and observe the reasonable instructions of the competent authorities of the New Zealand Defence Force as to the defence or settlement of the claim.
5. The competent authorities of Tuvalu shall not settle the claim without the prior consent of the New Zealand Defence Force, which shall not be unreasonably withheld.
6. The cost incurred in satisfying the claim, including the reasonable costs of the competent authorities of Tuvalu in dealing with the claim, shall be apportioned between the Parties, as follows:
 - (a) Where New Zealand is solely liable in respect of the claim, the New Zealand Defence Force shall meet the costs of the claim in full; and

- (b) 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.
- 7. This Article shall not apply to:
 - (a) Contractual claims against a member of a New Zealand contingent in his or her private capacity, which shall be subject to the normal legal processes of Tuvalu; or
 - (b) 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 Tuvalu.
- 8. The competent authorities of Tuvalu and the New Zealand Defence Force shall co-operate in the procurement of evidence for the fair hearing and disposal of claims.

Article 10

RESPECT FOR THE LAWS AND CUSTOMS OF TUVALU

- 1. The Government of New Zealand shall take appropriate measures to ensure that any New Zealand contingent:
 - (a) Respects the laws, regulations and customs of Tuvalu;
 - (b) Refrains from any activity inconsistent with the spirit of this Agreement; and
 - (c) Refrains from abusing any privileges granted under this Agreement.
- 2. Except as provided in this Agreement, no claim for immunity by a member of a New Zealand contingent based on his or her status as a servant or employee of the New Zealand Defence Force may, in respect of any claim, proceeding or action, be raised in a court of Tuvalu.

Article 11

SETTLEMENT OF DISPUTES

Disputes on the implementation or interpretation of this Agreement shall be settled amicably through consultations, and not referred to third parties for mediation or arbitration.

Article 12

EMERGENCY ASSISTANCE

- 1. In this Article, **emergency assistance** means the provision of medical, logistical or engineering support or any other support provided by a New Zealand contingent to

Tuvalu when the circumstances necessitate such support in an expedient manner, such as a natural disaster.

2. This Article applies and takes precedence in the event that Tuvalu requests emergency assistance from New Zealand.
3. On that request, the competent authorities of the Parties may implement a specific arrangement that outlines the understandings of the Parties regarding the provision of emergency assistance.
4. Unless otherwise agreed by the Parties, the competent authorities of Tuvalu will permit the New Zealand contingent to import, use, and export medical stores that may be required to provide medical assistance, on the basis that the competent authorities of the New Zealand Defence Force shall ensure that such medical stores comply with New Zealand domestic law and regulations.
5. Unless otherwise agreed by the Parties, a New Zealand contingent may freely import, use, and re-export any materiel which is necessary for the equipment, maintenance, operation and support of a New Zealand contingent providing emergency assistance.
6. Unless otherwise agreed by the Parties, a New Zealand contingent may freely import, use, and re-export any, vehicles, aircraft, vessels and plant necessary to provide emergency assistance, on the basis that:
 - (a) such vehicles, aircraft, vessels and plant comply with all New Zealand safety and operating regulations; and
 - (b) where applicable, the operators of such vehicles, aircraft, vessels and plant have the requisite operating licences recognised by the relevant authorities of New Zealand.
7. Unless otherwise agreed by the Parties, a New Zealand contingent may operate military aircraft at any civilian or public airfields as may be required for the provision of emergency assistance.
8. The support and assistance provided by New Zealand to Tuvalu under this Article will not incur cost, tax, or other form of charge normally levied by the competent authorities of Tuvalu.

Article 13

IMPLEMENTATION

Arrangements on the implementation of this Agreement may be mutually determined between the Ministry of Foreign Affairs of Tuvalu and the New Zealand Defence Force. The Ministry of Foreign Affairs of Tuvalu and the New Zealand Defence Force shall notify each other of the contact detail(s) of their competent authorities responsible for the implementation of this Agreement.

Article 14***ENTRY INTO FORCE, PERIOD OF VALIDITY AND TERMINATION***

This Agreement shall enter into force on the date of the last signature. The Agreement shall remain in force until the expiration of 180 days from the date on which a Party receives from the other Party written notice through diplomatic channels of the intention of that Party to terminate the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done at Suva on 21 June 2010 in duplicate in the English language.

For the Government of
New Zealand:

For the Government of the
Independent State of Tuvalu:

[Signatures not reproduced]