

No. 33405

**NEW ZEALAND
and
UNITED STATES OF AMERICA**

**Exchange of letters constituting an agreement concerning the
establishment of certain mutual defense commitments.
Washington, 16 July 1996**

Authentic text: English.

Registered by New Zealand on 8 December 1996.

**NOUVELLE-ZÉLANDE
et
ÉTATS-UNIS D'AMÉRIQUE**

**Échange de lettres constituant un accord concernant certains
engagements mutuels en matière de défense. Washing-
ton, 16 juillet 1996**

Texte authentique : anglais.

Enregistré par la Nouvelle-Zélande le 8 décembre 1996.

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT¹
BETWEEN NEW ZEALAND AND THE UNITED STATES OF
AMERICA CONCERNING THE ESTABLISHMENT OF CERTAIN
MUTUAL DEFENSE COMMITMENTS

I

DEPARTMENT OF STATE
WASHINGTON

July 16, 1996

Excellency,

I have the honor of referring to recent discussions which have taken place between officials of the Government of the United States of America and the Government of New Zealand (hereinafter referred to as the Parties) concerning the establishment of certain defense commitments between the two Parties. These discussions reflect the mutual desire of the Parties in the exercise of their national and mutual defense responsibilities for the security of the United States and New Zealand, to facilitate the process of cooperation in defense matters and to ensure that the respective interests of the Parties are fairly respected under international law.

I have, further, the honor to refer to the Agreement Concerning Mutual Defense Assistance, signed at Washington on June 19, 1952,² which, *inter alia*, provides that New Zealand is eligible to receive from the Government of the

¹ Came into force on 16 July 1996, in accordance with the provisions of the said notes.

² United Nations, *Treaty Series*, vol. 178, p. 315.

United States of America reimbursable military assistance under the provisions of Section 408(e) of the Mutual Defense Assistance Act of 1949. I have, still further, the honor to refer to the Parties' Agreement modifying the Agreement of June 19, 1952, signed at Wellington on March 25, 1960,¹ which, *inter alia*, provides that the assurances contained are applicable also to equipment, materials, information and services furnished under the Mutual Security Act of 1954, as amended. I have, still further, the honor to refer to the Parties' Agreement of Reciprocal Advance of Funds for Temporary Support of Armed Forces Personnel, signed at Wellington September 3, 1969,² which, *inter alia*, provides that when units or personnel of either the New Zealand or United States armed forces find themselves separated from their parent units and without adequate financial support, but in contact with the armed forces of the other State, the separated force may request funds for the purposes of disbursing pay and allowances or purchasing necessary supplies and services. Reimbursement of these funds shall be made in accordance with the procedures set forth in that Agreement.

In consideration of the above, I have the honor to propose that whenever our national defense organizations, within the limits of defense responsibilities and authorities as established by each Party, undertake to

¹ United Nations, *Treaty Series*, vol. 380, p. 424.

² *Ibid.*, vol. 723, p. 233.

cooperate in writing, such arrangements shall be subject to this Agreement between the Parties concerning certain mutual defense commitments as to the following matters:

1. As regards issues of liability not addressed by other agreements between the Parties, the following shall apply:

(i) Each Party waives all claims against the other for injury or death to its personnel, and for damage to its property arising from the performance of official duties.

(ii) In the event of claims from third parties for injury or death to persons or damage to property arising from the performance of official duties in carrying out cooperative research, development, test, evaluation or production programs, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be adjudicated by the most appropriate Government as agreed.

(iii) As to i, and ii, above, if the Parties agree that the damage, injury or death is caused by reckless acts, reckless omission, willful misconduct or gross negligence, the costs of any liability will be borne entirely by the Party of the culpable person.