

EMBASSY OF THE
UNITED STATES OF AMERICA

Wellington, November 11, 1982

No. 127

Excellency:

I have the honor to refer to discussions which have taken place between the New Zealand and the United States Governments concerning the establishment and operation in New Zealand by the United States Navy of an astronomical observatory. The purpose of this observatory is to contribute to the conduct of a scientific program, known as the Southern Astrometric Program, part of a worldwide research effort endorsed by the International Astronomical Union (IAU). The program is designed to improve our knowledge of the positions and motions of Southern Hemisphere stars. This knowledge is expected to have a variety of scientific uses, including study of the dynamics of the Milky Way Galaxy, the cosmic distance scale and the evolution of stars and the more accurate determination of star positions for navigational and geodetic purposes.

Enclosure:

1. Memorandum of Understandings

His Excellency

Hon. W. E. Cooper,

Minister of Foreign Affairs,

Wellington.

The results of the program will be made freely available to the international scientific community and to all nations who wish to use the material for navigational or other purposes. It is expected that results of the program will be included in a celestial catalog showing the positions and proper motions of stars in Southern Hemisphere skies.

I am able to confirm that the program has not been conceived for military purposes. The information collected by the observatory could have military applications, as is the case with other facilities which are concerned with the gathering of data of benefit to civilian and scientific users, but no military direction will be applied to the data collection process.

I now have the honor to propose that the provisions contained in the attached Memorandum of Understandings and Agreed Minute thereto shall apply to this program.

If the proposals contained in the present Note, and the understandings set out in the attached Memorandum and Agreed Minute thereto, are acceptable to the Government of New Zealand, I have the further honor to suggest that this Note and your reply thereto indicating such approval should constitute an agreement between our two Governments which shall enter into force on the date of your Note in reply

and shall remain in force for an initial period of ten years, after which period either Government may at any time give to the other Government notice of intention to terminate the agreement which shall then terminate six months after the date on which such notice was received.

Accept, Excellency, the renewed assurances of my highest consideration.

H. Monroe Browne

MEMORANDUM OF UNDERSTANDINGS

SOUTHERN ASTROMETRIC PROGRAM

1. (a) The Government of New Zealand agrees to the establishment and operation of an astronomical observatory on Mt. Altimarlock in the Black Birch Range in Marlborough in New Zealand for use by the United States Navy and to the establishment and operation of such communications facilities as the New Zealand and United States Governments agree are required in connection with such observatory. The observatory will consist of an automated seven-inch Transit Circle telescope housed in one building and, during a portion of the period of this Agreement, a twin astrograph telescope housed in another building, together with two small marker buildings, an operations building and a small utility structure.

(b) The Government of New Zealand agrees to the transit of United States personnel, ships and aircraft engaged in this program through New Zealand and to the accommodation of such United States personnel in New Zealand. The Government of the United States agrees to involve New Zealand personnel and New Zealand public or private entities, to the maximum practicable extent, in the provision of goods or services related to the establishment and operation of the observatory and may enter into contracts for this purpose.

(c) The financial and other conditions on which the site of the observatory may be made available together with the conditions under which it shall be returned, will be decided by agreement between the New Zealand and United States authorities.

(d) The Government of the United States agrees to the involvement of New Zealand scientists and other appropriate New Zealand personnel as fully as possible in the establishment and operation of the observatory and in the analysis of data acquired through the operation of the observatory. Detailed arrangements for the involvement of New Zealand scientists and other appropriate New Zealand personnel will be decided by agreement between the New Zealand and United States authorities.

(e) All data acquired through the operation of the observatory (including but not limited to celestial catalogs) and any other publications or reports produced from the data will be available to the New Zealand Government. In addition the results of the program will be made generally available to the scientific community world-wide. It is understood that the use of data made available will be governed by the normal courtesies concerning the use of scientific information and neither the data, publications or reports based on the data will be published without the consent of the United States, which will not be unreasonably withheld.

(f) The Government of the United States and the Government of New Zealand will consider arrangements, at the request of the Government of New Zealand, for the establishment and operation of meteorological instruments and the development of a reporting program for the New Zealand Meteorological Services at the observatory.

2. (a) As appropriate, the normal requirements in connection with the arrival in and departure from New Zealand of ships and aircraft of or chartered by the United States Navy engaged in the program will be waived.

(b) As appropriate, and subject to arrangements agreed between the New Zealand and United States authorities, the Government of New Zealand shall facilitate, consistent with law, the entry to and exit from its territory of United States personnel.

3. (a) Subject to such procedures as may be arranged, the Government of New Zealand will exempt from payment of taxes and customs duties, goods and equipment imported into or exported out of New Zealand by the United States authorities or United States personnel in connection with the program.

(b) The presence of United States personnel in New Zealand solely in connection with this program shall not subject them to taxation on their salary and emoluments received from the United States Government or on any tangible movable property the presence of which in New Zealand is due solely to their temporary presence there, nor constitute residence nor domicile for New Zealand tax purposes.

4. (a) If United States personnel are alleged to have committed acts which are offenses against New Zealand law, the following provisions shall apply:

(i) The New Zealand authorities, recognizing the problems arising from concurrent jurisdiction in criminal matters over such personnel in New Zealand territory, will consider alleged offenses affecting only United States personnel or property, or committed in the performance of official duty, as a matter for the United States authorities, unless the United States indicates in a particular case that it does not, under its laws, have jurisdiction to try the offense in question.

(ii) Moreover, the New Zealand authorities will not ordinarily be concerned to institute proceedings in the New Zealand courts in respect of alleged minor offenses which do not fall within the categories referred to in (i) above.

(b) For their part, the United States authorities will take measures to ensure respect for the laws of New Zealand by United States personnel and will take whatever steps are necessary to punish personnel subject to their jurisdiction who have committed acts which are offenses against those laws.

(c) United States personnel who have been arrested or apprehended, whether by the New Zealand authorities or by the United States authorities, will be retained in custody by the United States authorities, who shall produce the personnel concerned, upon request by the New Zealand authorities, for investigation, identification or trial. If, in a particular case, United States authorities are unable to retain custody of an individual over whom New Zealand will exercise jurisdiction the appropriate New Zealand authorities shall be promptly notified.

(d) It is understood that the principle of not trying an accused twice for the same offense will be followed, except that the United States authorities shall remain free to punish for violation of rules of military discipline.

5. (a) It is the understanding of the New Zealand Government that United States law makes provision for the settlement of meritorious claims for loss or damage caused by the acts or omissions (whether committed on or off duty) of United States personnel, and acts or omissions arising out of the performance of official duty by employees of the United States forces who are nationals of or ordinarily resident in New Zealand. In this connection, it is understood that the United States compensation authorities will pay, in accordance with and to the fullest extent possible under United States claims rules and procedures, just and reasonable compensation, when accepted by claimants in full satisfaction and in final settlement, for meritorious claims for injury or death or damage to property arising out of such acts or omissions. It is understood that United States claims legislation requires that such claims be presented to United States authorities within two years after the occurrence of the accident or incident out of which the claim arises.

(b) It is further understood by the two Governments that the satisfactory procedures which have been arranged with the Office of the Solicitor-General of New Zealand for the settlement of such claims will be maintained, and accordingly, that the United States compensation authorities will, in determining liability and compensation, continue to give due regard to the Solicitor-General's assessment and to the amount which he may recommend for settlement in particular cases.

6. The Governments of New Zealand and the United States of America will cooperate in making appropriate administrative arrangements to give effect to the understandings set out in this memorandum and to resolve any other practical issues which may from time to time arise from the presence in New Zealand of personnel, ships and aircraft of the United States in connection with the program.

7. The term "United States personnel" includes uniformed members of the United States forces and civilian employees of the forces except those employees who are nationals of, or ordinarily resident in, New Zealand; for the purposes of paragraphs 1, 2 and 3 of this memorandum it also includes the dependents of United States personnel.

AGREED MINUTE

With respect to paragraph 2, it is understood that uniformed members of the United States Forces should be permitted to enter New Zealand upon presentation of an identification card and appropriate orders. Other United States personnel shall have in their possession a passport and visa. The Government of New Zealand shall issue such visas and other necessary documentation in accordance with its laws and regulations.

11 November 1982

Excellency,

I have the honour to acknowledge the receipt of your Note of today's date, together with its attached Memorandum of Understandings and the Agreed Minute thereto, the texts of which read as follows:

"I have the honor to refer to discussions which have taken place between the New Zealand and the United States Governments concerning the establishment and operation in New Zealand by the United States Navy of an astronomical observatory. The purpose of this observatory is to contribute to the conduct of a scientific program, known as the Southern Astrometric Program, part of a worldwide research effort endorsed by the International Astronomical Union (IAU). The program is designed to improve our knowledge of the positions and motions of Southern Hemisphere stars. This knowledge is expected to have a variety of scientific uses, including study of the dynamics of the Milky Way Galaxy, the cosmic distance scale and the evolution of stars and the more accurate determination of

/star positions

His Excellency Mr H. Monroe Browne,

Ambassador of the United States of America,

WELLINGTON.

star positions for navigational and geodetic purposes.

The results of the program will be made freely available to the international scientific community and to all nations who wish to use the material for navigational or other purposes. It is expected that results of the program will be included in a celestial catalog showing the positions and proper motions of stars in Southern Hemisphere skies.

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If the proposals contained in the present Note, and the understandings set out in the attached Memorandum and Agreed Minute thereto, are acceptable to the Government of New Zealand, I have the further honor to suggest that this Note and your reply thereto indicating such approval should constitute an agreement between our two Governments which

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shall enter into force on the date of your Note in reply and shall remain in force for an initial period of ten years, after which period either Government may at any time give to the other Government notice of intention to terminate the agreement which shall then terminate six months after the date on which such notice was received.

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(b) The Government of New Zealand agrees to the transit of United States personnel, ships and aircraft engaged in this program through New Zealand and to the

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accommodation of such United States personnel in New Zealand. The Government of the United States agrees to involve New Zealand personnel and New Zealand public or private entities, to the maximum practicable extent, in the provision of goods or services related to the establishment and operation of the observatory and may enter into contracts for this purpose.

(c) The financial and other conditions on which the site of the observatory may be made available together with the conditions under which it shall be returned, will be decided by agreement between the New Zealand and United States authorities.

(d) The Government of the United States agrees to the involvement of New Zealand scientists and other appropriate New Zealand personnel as fully as possible in the establishment and operation of the observatory and in the analysis of data acquired through the operation of the observatory. Detailed arrangements for the involvement of New Zealand scientists and other appropriate New Zealand personnel will be decided by agreement between the New Zealand and United States authorities.

(e) All data acquired through the operation of the observatory (including but not limited to celestial catalogs) and any other publications or reports produced from the data will be available to the New Zealand Government. In addition the results of the program will be made generally available to the scientific community worldwide. It is understood that the use of data made available

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will be governed by the normal courtesies concerning the use of scientific information and neither the data, publications or reports based on the data will be published without the consent of the United States, which will not be unreasonably withheld.

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(b) The presence of United States personnel in New Zealand solely in connection with this program shall not subject them to taxation on their salary and emoluments received from the United States Government or on any tangible movable property the presence of which in New Zealand is due solely to their temporary presence there, nor constitute residence nor domicile for New Zealand tax purposes.

4. (a) If United States personnel are alleged to have committed acts which are offenses against New Zealand law, the following provisions shall apply:

(i) The New Zealand authorities, recognizing the problems arising from concurrent jurisdiction in criminal matters over such personnel in New Zealand territory, will consider alleged offenses affecting only United States personnel or property, or committed in the performance of official duty, as a matter for the United States authorities, unless the United States indicates in a particular case that it does not, under its laws, have jurisdiction to try the offense in question.

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(c) United States personnel who have been arrested or apprehended, whether by the New Zealand authorities or by the United States authorities, will be retained in custody by the United States authorities, who shall produce the personnel concerned, upon request by the New Zealand authorities, for investigation, identification or trial. If, in a particular case, United States authorities are unable to retain custody of an individual over whom New Zealand will exercise jurisdiction the appropriate New Zealand authorities shall be promptly notified.

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out of the performance of official duty by employees of the United States forces who are nationals of or ordinarily resident in New Zealand. In this connection, it is understood that the United States compensation authorities will pay, in accordance with and to the fullest extent possible under United States claims rules and procedures, just and reasonable compensation, when accepted by claimants in full satisfaction and in final settlement, for meritorious claims for injury or death or damage to property arising out of such acts or omissions. It is understood that United States claims legislation requires that such claims be presented to United States authorities within two years after the occurrence of the accident or incident out of which the claim arises.

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I have the honour to inform you that the proposals contained in your Note, together with the understandings set out in its attached Memorandum and the Agreed Minute thereto, are acceptable to the Government of New Zealand, which regards your Note and my present reply as constituting an agreement between our two Governments which shall enter into force on today's date.

/Accept,

Accept, Excellency, the renewed assurances of my
highest consideration.

A handwritten signature in dark ink, appearing to read 'Warren Cooper', written in a cursive style.

(Warren Cooper)

Minister of Foreign Affairs