

Proactive Release

Date: 9 December 2019

The following Cabinet paper and related Cabinet minute have been proactively released by the Minister of Foreign Affairs:

Termination of New Zealand France Friendship Fund:

(CAB-19-MIN-0555 refers)

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Cabinet

Minute of Decision

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Report of the Cabinet External Relations and Security Committee: Period Ended 25 October 2019

On 4 November 2019, Cabinet made the following decisions on the work of the Cabinet External Relations and Security Committee for the period ended 25 October 2019:

ERS-19-MIN-0029 **Termination of the New Zealand France
Friendship Fund** CONFIRMED
Portfolio: Foreign Affairs

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Cabinet External Relations and Security Committee
Minister of Transport



Cabinet External Relations and Security Committee

Minute of Decision

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Termination of the New Zealand France Friendship Fund

Portfolio **Foreign Affairs**

On 22 October 2019, the Cabinet External Relations and Security Committee:

- 1 **noted** that the New Zealand France Friendship Fund was established in 1991 by an Agreement (an international bilateral treaty) to encourage friendly relations between France and New Zealand;
- 2 **noted** that in 2006, Cabinet agreed that the Fund would be disestablished once its capital has been spent down [ERD Min (06) 3/2];
- 3 **noted** that the Fund's capital is now exhausted;
- 4 **agreed** that the Fund be disestablished by terminating the Agreement;
- 5 **noted** that the French Government has agreed to the termination of the Agreement;
- 6 **note** that the termination of the Agreement will be completed by a legally binding Exchange of Letters (included as Annex 2 to the paper under ERS-19-SUB-0029);
- 7 **noted** that the Minister of Foreign Affairs has determined that the Exchange of Letters terminating the Agreement is not a major bilateral treaty of particular significance, and therefore need not be subject to the parliamentary treaty examination process in accordance with Standing Orders 397-400;
- 8 **noted** that the administrative arrangements for the conclusion of the Fund will be managed by the Ministry of Foreign Affairs and Trade;
- 9 **noted** that the Ministry of Foreign Affairs and Trade will save approximately \$15,000 per annum after the Fund has been disestablished;
- 10 **authorised** the Minister of Foreign Affairs to approve any final terms of the disestablishment of the Fund.

Janine Harvey
Committee Secretary

Hard-copy distribution: (see over)

Present:

Rt Hon Jacinda Ardern
Rt Hon Winston Peters (Chair)
Hon Grant Robertson
Hon David Parker
Hon Stuart Nash
Hon Ron Mark

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Ministry of Foreign Affairs and Trade
Ministry of Defence

Hard-copy distribution:

Minister of Foreign Affairs

Proactively released by the Minister of Foreign Affairs

Office of the Minister of Foreign Affairs

Chair, Cabinet External Relations and Security Committee

TERMINATION OF THE NEW ZEALAND FRANCE FRIENDSHIP FUND

Proposal

1. This paper seeks approval to disestablish the New Zealand France Friendship Fund by terminating the *Agreement between the Government of New Zealand and the Government of the French Republic on the establishment of a fund to promote friendly relations between the citizens of the two countries*.

Executive Summary

- 1.1. The New Zealand France Friendship Fund was established by treaty in April 1991 as part of the arbitration over the Rainbow Warrior incident. Its objective is to promote friendly relations between the people of France and New Zealand and it has been used to support a range of educational, cultural, scientific and sporting projects.
- 1.2. In 2006, Cabinet approved a recommendation to begin drawing down the Fund's capital, with a view to terminating the Fund when the capital was exhausted.
- 1.3. With the Fund's capital now fully spent, this paper seeks Cabinet approval to terminate the Agreement and to disestablish the Fund.
- 1.4. The French Government has agreed to the Fund's termination.

Background

2. The New Zealand France Friendship Fund (the Fund) was established in April 1991 by the *Agreement between the Government of New Zealand and the Government of the French Republic on the establishment of a fund to promote friendly relations between the citizens of the two countries* (the Agreement).
3. The Agreement was signed in Wellington on 29 April 1991 by Prime Ministers Jim Bolger and Michel Rocard. It is a bilateral treaty (B1991/03) and registered with the United Nations Secretariat (UN Reg. No. 28701). A copy of the Agreement is included in Annex 1.
4. The Fund was established after a ruling by the International Arbitral Tribunal on 30 April 1990 as part of the arbitration process following the Rainbow Warrior incident of 1985. The Tribunal recommended that a trust fund be established to promote close and friendly relations between the people of France and New Zealand. The capital

sum settled on the Fund was US\$2 million by France and NZ\$100,000 by New Zealand.

5. Since its establishment, the Friendship Fund has made disbursements on an annual basis from income derived from investments made by the French institution, the Fondation de France. A Joint Board, comprising French and New Zealand co-chairs and members from both countries, meets annually in alternate capitals to consider grant applications.
6. Following sharply declining financial returns and after consultation with the French Government, Cabinet in 2006 approved a recommendation to begin spending the Fund's capital and to ultimately conclude the Fund (CAB Min (06)12/2). The parties confirmed this understanding by an exchange of letters on 3 October 2006. It was also agreed that the Fund should be given a finite end date of 2021, coinciding with the 30th anniversary of the Fund's establishment. Principal considerations for Cabinet's decision were:
 - as the New Zealand-France relationship had improved, the importance of the Fund in promoting good bilateral relations had lessened;
 - there were alternative vehicles available for the promotion of bilateral cultural relations;
 - in financial terms, the Fund's capital would not continue to yield sufficient returns to fulfil its objectives; and
 - maintaining grant distribution in real terms could only be achieved by using the Fund's capital base.
7. The Fund has achieved its aims and with this in mind, neither Government has injected capital for some time. Since 2006, the funds have been progressively drawn-down to support a range of projects. This includes a recent decision by the Joint Board to invest in two legacy projects, which support the Katherine Mansfield Menton Fellowship in France and the Randell Cottage Writers Trust in New Zealand. The income from these legacy investments provides a means for the Fund to continue to benefit the French/New Zealand relationship after its disestablishment.
8. Following these investments, the Joint Board was advised at its meeting in Paris on 6 June 2019 that €95,000 remained in the Fund. The Board agreed to spend this money on selected project grants which will see the Fund effectively exhausted, and to recommend that the Agreement be terminated and the Fund formally disestablished.
9. Article 11 of the Agreement provides for parties to jointly terminate the Agreement and disestablish the Fund. Following consultation, Ministry officials and officials from the French Government have agreed that the Agreement is best terminated by a legally binding Exchange of Letters, similar to that used in 2006 to modify the Agreement.
10. Cabinet approval is required for any proposal for New Zealand to take binding treaty action, which includes termination of a treaty (Cabinet manual rule 5.79). Approval is

therefore sought to terminate the Agreement, which will be done by a legally binding Exchange of Letters.

11. Officials have negotiated the text of an Exchange of Letters to terminate the Agreement (Annex 2 refers). This draft has been tabled with the French Government, which has indicated its approval and willingness to sign.
12. The Parliamentary treaty examination process requires all “major bilateral treaties of particular significance” be presented to the House of Representatives, for examination by a select committee, before binding treaty action is taken (Standing Order 397). The Minister of Foreign Affairs determined on 6 September 2019 that the Exchange of Letters to terminate the Agreement is not a major bilateral treaty of particular significance and so should not be subject to the parliamentary treaty examination process in accordance with Standing Order 397.
13. Once approval to terminate the Agreement by an Exchange of Letters has been given by Cabinet, officials will seek an Instrument of Full Powers from the Minister of Foreign Affairs, to allow the New Zealand Ambassador to France to sign the Exchange of Letters on behalf of the Government of New Zealand.
14. The Agreement will cease to have effect on the date of the letter and the Ministry of Foreign Affairs will begin steps to wind up the Fund. The Joint Board of the Fund will be disestablished shortly afterwards, with any further administrative work that arises to be handled by the Ministry.

Comment

15. With the capital now fully expended and with the agreement of all stakeholders (most notably the French Government), it is appropriate that the New Zealand France Friendship Fund be terminated.
16. The Fund has achieved its objective in over 28 years of operation in encouraging close and friendly relations between the two countries. Using the income and capital of the Fund, it has spent approximately \$5 million on grants for projects and exchanges, many of which are now self-sustaining and will continue to be run in the future. Examples of the Fund’s use include educational exchanges with France and the French Pacific, WWI centenary projects, scholarships for postgraduate study in France and various other cultural, sporting and scientific exchanges.
17. The bilateral relationship between France and New Zealand is now in excellent shape and has moved on a great deal since 1985. France and New Zealand enjoy strong people-to-people, cultural, sporting and historical links, as well as consistent two-way trade, and a common interest in the stability and prosperity of the Pacific region. We also seek to co-operate on issues of considerable global importance, as was evident by the recent Christchurch Call hosted by France and New Zealand in Paris on 15 May 2019.
18. While the Cabinet Paper of 2006 envisaged 2021 as an appropriate end date for the Fund, being the 30th anniversary of the Fund’s creation, the Fund is being wound-up on a high note in advance of the proposed completion date. This is due to the Board’s decision to make two legacy investments to support writers’ residencies in

France (the Katherine Mansfield Menton Fellowship) and New Zealand (the Randell Cottage Writers residency).

19. These two legacy investments have involved the transfer of approximately \$780,000 from France to New Zealand. This money is invested with the Arts Foundation of New Zealand and its income will be used to continue to support these French/New Zealand projects long after the Fund has been disestablished. This is rightly seen as a success for New Zealand, given initial advice from French officials that it would not be possible to reinvest the Fund's capital in New Zealand.

Consultation

20. The Treasury and DPMC (Policy Advisory Group) were consulted. The Department of Internal Affairs, which manages two other Funds created after the Rainbow Warrior incident (the Pacific Development and Conservation Trust and the Peace and Disarmament Education Trust), was also consulted. Both of these Funds continue to operate and provide annual grants in support of their objectives.

Financial Implications

21. Article 9 of the Agreement provides that the Ministry of Foreign Affairs and Trade will give administrative assistance to the Board of the Fund. The termination of the Agreement will put an end to these administrative costs borne by the Ministry. This has recently included paying the salary of a part-time Fund secretary, administering the grant payments from the Fund's bank account and preparing and filing annual financial returns. Once the final project grants have been paid and any compliance costs around the termination of the Agreement have been covered (all of which will be paid for by the Fund), the Ministry will close the Fund's trust account and arrange with the Charities Commission for it to be deregistered.

Legislative Implications

22. No legislation is required to implement the proposals in this paper.

Human rights

23. There are no human rights implications for this proposal.

Publicity

24. Public messages will be prepared to recognise and celebrate all that the Fund has achieved in close to 30 years of promoting friendly relations between France and New Zealand. It is recommended that the Ministers of Foreign Affairs of both countries release a joint media statement at the conclusion of the Fund.

Proactive Release

25. The Minister proposes to release this paper proactively, subject to redaction as appropriate.

Recommendations

The Minister of Foreign Affairs recommends that the Cabinet External Relations and Security Committee:

1. note that the New Zealand France Friendship Fund was established in 1991 by an Agreement (an international bilateral treaty) to encourage friendly relations between France and New Zealand;
2. note that Cabinet agreed in 2006 that the Fund would be disestablished once its capital has been spent down;
3. note that the Fund's capital is now exhausted;
4. agree that the Fund should be disestablished by terminating the Agreement;
5. note that the French Government has agreed to the termination of the Agreement;
6. note that the termination of the Agreement will be completed by a legally binding Exchange of Letters (included as Annex 2);
7. note that the Minister of Foreign Affairs has determined that Exchange of Letters terminating the Agreement is not a major bilateral treaty of particular significance and therefore need not be subject to the parliamentary treaty examination process in accordance with Standing Orders 397-400.
8. note that the administrative arrangements for the conclusion of the Fund will be managed by the Ministry of Foreign Affairs and Trade;
9. note that the Ministry of Foreign Affairs and Trade will save approximately \$15,000 per annum after the Fund has been disestablished; and
10. authorise the Minister of Foreign Affairs to approve any final terms of the disestablishment of the Fund.

Authorised for lodgement

Rt Hon Winston Peters

Minister of Foreign Affairs

Annex 1: Agreement of 29 April 1991

A.134



New Zealand Treaty Series, 1991, No.3
Ministry of External Relations and Trade

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND AND
THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE
ESTABLISHMENT OF A FUND TO PROMOTE FRIENDLY
RELATIONS BETWEEN CITIZENS OF THE TWO
COUNTRIES

Wellington, 29 April 1991
[In force, 29 April 1991]

Presented to the House of Representatives

Price Code: 4-8X

AGREEMENT BETWEEN THE GOVERNMENT OF
NEW ZEALAND AND THE GOVERNMENT OF THE
FRENCH REPUBLIC ON THE ESTABLISHMENT OF A
FUND TO PROMOTE FRIENDLY RELATIONS BETWEEN
CITIZENS OF THE TWO COUNTRIES

The Government of New Zealand and the Government of the French Republic (hereinafter "the Parties"),

Desiring to promote close and friendly relations between the citizens of the two countries and to implement the recommendation made with this aim in mind, in the ruling of 30 April 1990 of the Arbitral Tribunal established by New Zealand and France,

Have agreed as follows:

ARTICLE 1

The Parties hereby establish a Fund with the aim of promoting friendly relations between the citizens of the two countries.

ARTICLE 2

The Fund shall comprise such funds as may be contributed by the Parties and any other funds from other sources which the Parties agree might be contributed to the Fund.

ARTICLE 3

1. The capital of the Fund shall be invested in such manner and in such places as from time to time agreed by the Parties in order to maintain and safeguard the capital value of the Fund, and to maximise the generation of income from the Fund.

2. In order to maintain the real value of the capital of the Fund, the Parties may jointly decide from time to time that an appropriate proportion of the income of the Fund shall be allocated to the capital of the Fund.

ARTICLE 4

1. The two Parties shall establish a Board which shall administer the Fund so as to fulfil the objectives of the Fund set out in this Agreement. In carrying out its functions, the Board shall take into account the objectives and the programmes of the Cultural Agreement between the Government of New Zealand and the Government of the French Republic signed in Paris on 18 November 1977.

2. The Board shall comprise two co-chairmen and four other members who shall be appointed in an honorary capacity. Each Party shall appoint one co-chairman and two other members.

3. The Board shall meet at least once a year, alternately in Wellington and in Paris, in order to decide the allocation of the income of the Fund in accordance with the terms set out in this Agreement. Decisions on the allocation of the income shall be made by unanimous vote of all Board members present at the meeting, which shall include at least one member appointed by each Party. The Board may also make decisions on the allocation of income between meetings. In this case, decisions shall be made by the unanimous written agreement of all six Board members.

ARTICLE 5

The Board shall allocate the income of the Fund to projects and activities which have as their object the promotion of close and friendly relations between the citizens of both countries. The allocation by the Board of the income of the Fund to such projects and activities shall be made from funds remaining after a proportion of the income of the Fund has been allocated to the capital of the Fund in accordance with Article 3 (2) of this Agreement and after allowance has been made for the expenses of Board members in accordance with Article 7 of this Agreement.

ARTICLE 6

The Board may make separate arrangements with the recipients of grants of income from the Fund, in relation to specific projects or activities, which may specify the nature and objectives of the project or activity, financial responsibilities, administrative procedures, reporting requirements and other appropriate matters.

ARTICLE 7

The expenses of Board members in attending meetings of the Board shall be met from the income of the Fund, except that in the case of expenses for international travel the income of the Fund shall not cover the cost of more than one such journey per annum without the specific agreement of the two Parties.

ARTICLE 8

1. The Board shall report annually on the operation of the Fund to the Prime Ministers of New Zealand and the French Republic.

2. The Board shall provide a report on the operation of the Fund for meetings of the Mixed Commission established by Article XIV of the Cultural Agreement between the Government of New Zealand and the French Republic, done in Paris on 18 November 1977.

ARTICLE 9

The New Zealand Ministry of External Relations and Trade and the French Ministry of Foreign Affairs shall provide administrative assistance to the Board, and shall facilitate consultation between members of the Board between meetings.

ARTICLE 10

Each Party shall facilitate, consistent with its law, the entry to and temporary residence in its respective territory of persons from the other country involved in projects or activities being assisted by the Fund.

ARTICLE 11

This Agreement shall enter into force on the date of its signature. The Parties may jointly terminate this Agreement. The Parties shall in that case agree on all matters related to the termination and winding up of the Fund.

DONE in duplicate at Wellington on the 29th day of April 1991 in English and French, each text being equally authentic.

JIM BOLGER
For the Government of
New Zealand

MICHEL ROCARD
For the Government of
France

Annex 2:

Exchange of letters

MINISTRY FOR EUROPE AND FOREIGN AFFAIRS

General Directorate for Political Affairs and Security

General Directorate for Asia and Oceania

The Director

Paris, 6 August 2019

Dear Ambassador,

The Agreement between the Government of New Zealand and the Government of the French Republic on the establishment of a fund to promote friendly relations between the citizens of the two countries, known as the New-Zealand-France Friendship Fund (hereafter “the Fund”), was signed on 29 April 1991 and entered into force the same day.

Given that after 28 years of existence, the objectives of the Friendship Fund have been largely achieved and that the capital of the Fund, managed by the Fondation de France, will soon be totally exhausted, I have the honour, on instructions from my Government and with authority established for this purpose, to propose that we jointly terminate the Agreement pursuant to the provisions of Article 11.

If this proposal is acceptable to the Government of New Zealand, this letter together with your response shall constitute an agreement between our two Governments on this matter, which will come into force on the date of your reply. The Agreement signed on 29 April 1991 will cease to have effect on that same date.

Yours sincerely,

Thierry MATHOU

MINISTERE
DE L'EUROPE ET DES
AFFAIRES ETRANGERES

DIRECTION GENERALE DES AFFAIRES
POLITIQUES ET DE SECURITE

DIRECTION D'ASIE ET D'OCEANIE

Paris, le 6 août 2019

Le Directeur

Madame l'Ambassadrice,

L'Accord entre le Gouvernement de la République française et le Gouvernement de la Nouvelle-Zélande concernant la création d'un fonds destiné à promouvoir des relations amicales entre les citoyens des deux Etats, dit Fonds d'amitié France-Nouvelle-Zélande (ci-après « le Fonds »), a été signé le 29 avril 1991 et est entré en vigueur le même jour.

Considérant qu'après vingt-huit ans d'existence, les objectifs du Fonds ont été largement atteints et que le capital du Fonds, hébergé par la Fondation de France, sera bientôt totalement liquidé, j'ai l'honneur, d'ordre de mon Gouvernement et muni des pouvoirs établis à cet effet, de vous proposer d'y mettre fin d'un commun accord, selon les modalités prévues à l'article 11.

Si cette proposition rencontre l'agrément du Gouvernement de Nouvelle Zélande, la présente lettre ainsi que la réponse que vous voudrez bien m'adresser constitueront un Accord entre nos deux Etats, qui entrera en vigueur à la date de réception de votre réponse. L'Accord signé le 29 avril 1991 cessera de produire ses effets à la même date.

Je vous prie d'agréer, Madame l'Ambassadrice, l'assurance de ma haute considération.

Thierry MATHOU