

RESTRICTED

C09003710-WLN

Your Reference:

Our Reference:

FROM: Wellington (MEA) C09003710-WLN

TO: Tehran, Washington, New York

CC: Wellington, Defence, EAB, The Hague, Brussels, Berlin, Geneva, Stockholm, Madrid

MFAT: MEA, ISED, LGL, AMER, AUS, DSP1, DSP3, DSP4, CEO

AGENCIES: SEEMail: Defence MOD (Sec Def, IDR)
Manual: Defence HQNZDF (VCDF, AC MFA, P/S Defence, PMC [FP/

ATTACHMENTS: 2194470-v1-Afghanistan_- _NZ-
AFG_arrangement_on_detainee_transfers_(5_
2214420-v1-Afghanistan_- _NZMTA_as_edited_
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AFGHANISTAN: MILITARY TECHNICAL ARRANGEMENT: CROSS-ACCREDITATION VISIT

Summary

With the Afghanistan Policy Review due to be considered by Cabinet on 10 August, we seek urgent signature of an updated Afghanistan / New Zealand Military Technical Arrangement (MTA) and separate Arrangement covering the Treatment of Detainees (ATD) handed to Afghanistan authorities by New Zealand forces.

Message

Action

Tehran : To forward attached draft updated MTA and ATD texts to the Government of Afghanistan.

Ambassador Sanders to visit Afghanistan to call on relevant authorities, **PSR(C)1** to emphasis the importance New Zealand places on concluding the updated MTA and a separate ATD on detainees at the earliest opportunity.

Washington /New York : To forward attached draft updated MTA and ATD texts to relevant Afghan Ambassadors, highlighting the urgency New Zealand places on an early signature and to inform senior United States State Department and Defence contacts of these developments.

Report

Thanks for Tehran's C09000053-TEH and Washington's C0900507-WSH.

2 **PSR(IC)4** comments on the limitations around updating the Afghanistan / New Zealand Military Technical Arrangement (MTA) to include wording on the death penalty were useful and the first clear indication from Afghanistan that **PSR(IC)4**

3 Of **PSR(C)1** proposed alternatives we prefer the second – a separate non-binding instrument at Ministry level with wording providing assurance that any detainees handed to Afghanistan authorities by New Zealand forces will be treated in accordance with international humanitarian and human rights law and will not be subject to the death penalty. This is similar to the approach taken by the **PSR(C)1** who concluded a non-binding Memorandum of Understanding. In accordance with New Zealand's treaty practice this would be done as an Arrangement. We agree that the most efficient option is for the text – an Arrangement on the Transfer of Detainees (ATD) – to be signed by Ambassadors in Washington. A minor change on our part to the suggested approach by **PSR(C)1** is for New Zealand's participant to be the New Zealand Defence Force rather than MFAT, as the text specifically relates to NZDF activity. However, NZDF has agreed to delegate signing authority to Ambassadors Ferguson and Sanders. Grateful Washington and Tehran pass the attached text urgently to **PSR(C)1** / Government of Afghanistan for approval and sign and conclude the text if possible.

4 We also attach a revised updated MTA. Reference to the death penalty has been removed. However, the draft contains a number of other updates relevant to current and future deployments (our C09003184-WLN and C09003238-WLN refer). If possible, the updated MTA should be signed at the same time as the ATD.

5 The Afghanistan Policy Review is due to be considered by Cabinet shortly. Cabinet is expected to approve changes to the composition of New Zealand's deployments to Afghanistan. (A cable from DSP1 regarding review outcomes will follow later in the week.) We would therefore like to conclude the updated MTA and ATD as soon as possible, preferably before the Cabinet meeting on 10 August.

6 We agree that Sanders should travel to Kabul in the next week, if possible, on a cross-accreditation visit to emphasise to senior contacts, **PSR(C)1** the urgency New Zealand places on concluding the MTA and ATD at the earliest opportunity. **PSR(C)1**

**MILITARY TECHNICAL ARRANGEMENTS
BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE
GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN**

Preamble

1. Referring to the discussions that have previously taken place between officials of New Zealand and the Afghanistan Transitional Authority (ATA) during which ATA officials requested the assistance of Provincial Reconstruction Teams (PRTs) in selected regional centres of Afghanistan, as well as the provision of further assistance.
2. Referring also to the subsequent discussions that have taken place between officials of New Zealand and the Government of the Islamic Republic of Afghanistan (hereinafter referred to as "the Participants") during which Afghan officials reiterated the request for assistance of PRTs in selected regional centres of Afghanistan, as well as the provision of further assistance.
3. Noting that New Zealand has been providing assistance to Afghanistan since 2003 by leading a PRT in Bamyan Province of Afghanistan, as well as by providing training assistance to the Afghan National Army (ANA), and that the Government of Afghanistan has been pleased to accept this assistance.
4. Having regard to the Agreement on Provisional Arrangements in Afghanistan pending the re-establishment of Permanent Government Institutions, signed in Bonn on 5 November 2001, and the Afghanistan Compact, launched in London on 31 January 2006, and relevant United Nations Security Council resolutions relating to Afghanistan.
5. These arrangements will be referred to as the New Zealand Military Technical Arrangements (NZ MTA).

Application

6. The NZ MTA is primarily intended to cover the New Zealand contribution to the PRTs in Afghanistan. The Participants further intend that the NZ MTA provisions will also apply to all other New Zealand Defence Force (NZDF) personnel in Afghanistan, as well New Zealand personnel involved in other efforts in Afghanistan.

Definitions

7. The following definitions will apply to these Arrangements:
 - a. The New Zealand Area of Operations (AO) is the Bamyan PRT region, comprising the Bamyan Province and communication routes between Bamyan and Kabul and between Bamyan and Bagram.
 - b. New Zealand personnel will include all New Zealand PRT Personnel, NZDF personnel that are present in Afghanistan providing training assistance to the ANA, and other New Zealand military and civilian personnel who are or may be present in Afghanistan in accordance with UN Security Council resolutions or with the consent of the Government of Afghanistan.

- c. New Zealand PRT Personnel will include all military and civilian personnel forming part of the New Zealand PRT and personnel from other nations who are attached to the New Zealand PRT.

Status of New Zealand Personnel

8. The status of New Zealand PRT and other New Zealand personnel is set out in the Annex to this NZ MTA. In relation to New Zealand personnel who are accredited to the New Zealand Embassy in Tehran who may from time to time be present in Afghanistan, the provisions of the Annex will be without prejudice to the provisions of the Vienna Convention on Diplomatic Relations (1961).

Mission Objectives

9. The Participants understand and acknowledge the primary purpose of the New Zealand support is to lead a multi-disciplinary PRT (the New Zealand PRT) with the aim of achieving the following objectives:

- a. To extend the Government of Afghanistan's authority in the AO;
- b. To facilitate the development of a stable and secure environment in the AO;
- c. To facilitate the monitoring and reporting on the progress of elements of the Security Sector Reform (SSR).
- d. To support the Disarmament Demobilisation and Re-integration (DDR) programme.

Provincial Reconstruction Team

10. The New Zealand PRT will contribute towards improving the security environment in the regions and encourage more widespread reconstruction effort. New Zealand will work through the PRT HQ, and will act as lead nation for the PRT HQ in the Bamyan region. The New Zealand PRT will be structured on a "multi-disciplinary" basis, with personnel initially being drawn from the NZDF as the lead agency, supported by other subject matter experts from New Zealand and other states, as necessary. New Zealand will seek to encourage other states to contribute personnel to the New Zealand PRT to support the mission objectives as they evolve over time.

Illustrative Tasks

11. In order to facilitate the Mission Objectives, the New Zealand PRT will undertake a range of tasks in the AO. Possible tasks will include:

- a. Assisting in extending the Government of Afghanistan's authority in the Bamyan Province, as guided by the Government of Afghanistan and through dialogue with local political, religious, military and secular leaders throughout the province, and liaison with the Government of Afghanistan via the PRT HQ.;

- b. Facilitating SSR within Bamyan Province, working with SSR lead nations as required;
- c. Supporting Government of Afghanistan initiatives and programmes associated with DDR in the Bamyan Province;
- d. Stimulating the reconstruction effort in the Bamyan Province in line with the Government of Afghanistan's priorities, and maintaining dialogue with UNAMA and IO/NGOs, thereby;
- e. Facilitating the development of a stable and secure environment in the Bamyan Province.

12. The New Zealand PRT will liaise with such political, social and religious leaders as necessary to ensure those religions, ethnic and cultural sensitivities in Afghanistan are appropriately respected.

Identification

13. New Zealand military personnel will carry a military identification card, and carry arms openly as authorised by their orders. New Zealand civilian personnel will carry formal identification – but will not, **except in the case of civilian personnel who are members of the New Zealand Police**, be authorised by the Senior NZDF Officer posted to Afghanistan (the Senior NZDF Officer) to carry arms for the purpose of this mission. **Civilian personnel who are members of the New Zealand Police may be authorised by the Senior NZDF Officer and their orders to carry arms.**

Threat Assessment

14. The Participants understand there remains a credible threat to New Zealand personnel and to the safe conduct of their mission. In carrying out the mission objectives, the Government of Afghanistan understands that the Senior NZDF Officer may direct the New Zealand military personnel to take such measures he or she considers it necessary to ensure the safety of the New Zealand personnel.

15. **The Participants understand that civilian personnel who are members of the New Zealand Police may use force to defend themselves or others whom they have a duty to protect.**

16. In view of the threat to New Zealand personnel, the Participants understand the Senior NZDF Officer may need to use force (including lethal force) to ensure the safety of his deployed force, including designated persons, designated property, and designated locations. Such measures, authorised by specific orders, may only be authorised if it is commensurate with the threat posed to New Zealand personnel. This could include the use of close air support, firearms, the temporary detention of persons assessed as presenting a threat to the security of the New Zealand personnel or the safe conduct of their mission, and the seizure of arms where they threaten the mission. Detained persons and seized arms will be handed over as soon as it is judged safe to do so by the Senior NZDF Officer or the Officer's representative to the appropriate Afghan authorities.

Membership of PRT

17. It is understood that the membership of the PRT may change as it evolves in the conduct of its mission.

Final Authority to Interpret

18. The Senior NZDF Officer is the final authority regarding interpretation of the NZ MTA. The Officer's determinations are final.

Summary

19. The purpose of the NZ MTA is:

- a. To set out the mission objectives and likely tasks of the New Zealand PRT;
- b. To outline the arrangements covering New Zealand personnel deployed in Afghanistan under the NZ MTA.

Final Provisions

20. The NZ MTA, including the Annex which forms an integral part of the NZ MTA, will come into effect for the Participants on the date that both of the Participants sign the NZ MTA. It will remain in effect unless or until the Participants consent in writing to termination. A Participant may withdraw from the NZ MTA by giving at least six months notice in writing to the other Participant.

21. The NZ MTA may be amended at any time with the consent in writing of the Participants.

22. Certified copies of the NZ MTA will be supplied in Dari, Pushtu, Turkmen and Uzbek language versions. For the purposes of the interpretation, the English language version of these Technical Arrangements is authoritative.

The foregoing represents the understandings reached by the Participants

SIGNED in duplicate at _____ on _____ 2009 in English

For the Government of the Islamic Republic of Afghanistan

For the Government of New Zealand

**ARRANGEMENTS REGARDING THE
STATUS OF NEW ZEALAND PERSONNEL DEPLOYED
TO AFGHANISTAN UNDER THE NEW ZEALAND MTA**

Jurisdiction

1.1 All New Zealand personnel deployed to Afghanistan under the NZ MTA will, under all circumstances and at all times, be subject to the exclusive jurisdiction of their national authorities in respect of any criminal or disciplinary offences which may be committed by them on the territory of Afghanistan.

1.2 All New Zealand personnel, enjoying privileges and immunities under the NZ MTA, will respect the laws of Afghanistan, insofar as it is compatible with the mission objectives, and will refrain from activities not compatible with the nature of the mission.

1.3 New Zealand personnel will be immune from personal arrest or detention without the express consent of the Senior New Zealand Defence Force Officer posted in Afghanistan (the Senior NZDF Officer). New Zealand personnel, mistakenly arrested or detained, will be immediately handed over to the Senior NZDF Officer or the Officer's representative.

1.4 In giving effect to this Arrangement, the Participants will at all times act in a manner consistent with their obligations under international law.

Entry into and Departure from Afghanistan

2.1 The Government of Afghanistan understands and acknowledges New Zealand personnel may enter and depart Afghanistan with appropriate identification and with collective movement and travel orders.

2.2 The Government of Afghanistan understands and acknowledges that all those participating in and supporting New Zealand missions in Afghanistan under the NZ MTA (New Zealand missions) will have the unimpeded right to enter Afghan airspace without seeking prior diplomatic clearance.

Indemnification, Claims and Liabilities

3.1 New Zealand personnel will be exempt from providing inventories or other routine customs documentation on personnel, vehicles, vessels, aircraft, equipment, supplies, and provisions entering and exiting or transiting Afghanistan territory in support of New Zealand missions. The Government of Afghanistan will facilitate with all appropriate means, all movements of personnel, vehicles, aircraft or supplies, airports or roads used. Vehicles, vessels and aircraft used in support of the mission will not be subject to licensing or registration requirements, or commercial insurance. New Zealand missions will use airports and roads without payment of duties, dues, tolls or charges. However, New Zealand missions will not claim exemption from reasonable charges for services requested and received, but

operations/movements and access will not be allowed to be impeded pending payment for such services.

3.2 New Zealand personnel will be exempt from taxation by the Government of Afghanistan on their salaries and emoluments, and on any income received from outside Afghanistan.

3.3 New Zealand missions and their tangible moveable property, imported into or acquired in Afghanistan, will be exempt from all identifiable taxes by the Government of Afghanistan.

3.4 New Zealand personnel will not be liable for any damages to civilian or government property caused by any activity in pursuit of the mission. Claims for other damage or injury to personnel or property of the Government of Afghanistan, or to private personnel or property, will be submitted through the Government of Afghanistan to the New Zealand PRT HQ.

Force Support

5.1 New Zealand personnel will be allowed to import and export free of duty or other restriction, equipment, provisions and supplies necessary for a New Zealand mission, provided such goods are for the official use of the mission, or for sale via commissioners or canteens provided for the New Zealand and supporting personnel, including associated liaison personnel. Goods sold will be solely for the use of the New Zealand or supporting personnel and are not transferable.

5.2 New Zealand personnel will be allowed to operate their own internal mail and telecommunications services, including broadcast services, free of charge.

5.3 The Government of Afghanistan will provide, free of cost, such facilities as the New Zealand PRT may need for the execution of the missions. The Government of Afghanistan will assist New Zealand missions in obtaining, at the lowest rate, the necessary utilities such as electricity, water and other resources necessary for the mission.

5.4 Nominated representatives of the New Zealand missions will be allowed to contract directly with suppliers for services and supplies in Afghanistan without payment of tax or duties. Such services and supplies will not be subject to sales or other taxes. The New Zealand missions may hire local personnel who will remain subject to local laws and regulation. However, local personnel hired by the New Zealand missions will:

- a. Be immune from local process in respect of words spoken or written and all acts performed by them in their official capacity;
- b. Be immune from National Service and/or national military service obligations;
- c. Be exempt from taxation on the salaries and emoluments paid to them by New Zealand missions.

5.6 The Government of Afghanistan will accept as valid, without tax or fee, drivers' licences and permits issued to the New Zealand missions by their respective national authorities.

Medical and Dental

6.1 The Government of Afghanistan will permit the importation and carriage of controlled drugs as required by the New Zealand missions and as officially issued to individual personnel.

6.2 The Government of Afghanistan will ensure that aircraft participating in or supporting New Zealand missions, including MEDEVAC aircraft and helicopters, will be given the highest priority to transit to, within, and from, the relevant area of operations, and given unrestricted access to the airspace of Afghanistan to fulfil any emergency mission.

Application

7.1 The protections hereby set out will apply to New Zealand personnel as defined in paragraph 7.b. of the NZ MTA. This will not affect any additional protections, rights and exemptions of other forces operating in Afghanistan negotiated separately with the Government of Afghanistan.