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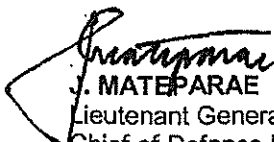
NEW ZEALAND DEFENCE FORCE
COVER SHEET

To accompany documents to
Minister of Defence

Subject:	OP WĀTEA Legal Basis		
NZDF File No.	NZDF Tracking # NZDF 03130/DSC/WĀTEA <i>(For OCDF Use Only) @OCDF/NZDF 147/2010</i>	Minister's Tracking#: <i>(For Minister's office)</i>	
Priority:	ROUTINE	Request Ministerial response by:	
Contacts:	1. Lt Colonel PSR(IC)3 2. Brigadier K.J. Riordan	Tel: PSR(IC)3 Tel: PSR(IC)3	A/H: PSR(IC)3

Sheet not to exceed one page. Please complete shaded areas.

Purpose:	To advise the Minister of the legal basis and mandate for OP WĀTEA.
Recommendations:	Nil.
MOD/NZDF Consultation	Not required: Legal advice. Other Agencies:
Minister's comments:	
Minister's Action:	Signed / Noted / Agreed / Approved / Declined Referred to:
Signature:	Date:


J. MATEPARAE
Lieutenant General
Chief of Defence Force

Date 14 Apr 10

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DOT-POINT BRIEF FOR MINISTER OF DEFENCE

LEGAL BASIS FOR OP WĀTEA - 13 APRIL 2010

- **Bonn Agreement.** On 5 December 2001 in Bonn, Germany, the interested groups in Afghanistan signed the *Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement)*. The Bonn Agreement called for the establishment of a United Nations mandated force to assist in the maintenance of security in Kabul and its surrounding areas.
- **ISAF Origins.** United Nations Security Council adopted Resolution 1386 (2001) (UNSCR 1386) on 20 Dec 01. UNSCR 1386 authorised, under Chapter VII of the United Nations Charter, the establishment of an *International Security Assistance Force (ISAF)* in Afghanistan. UNSCR 1386 provided ISAF with the mandate *to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the AIA as well as the personnel of the United Nations can operate in a secure environment*.
- **ISAF Mandate.** This mandate has been expanded under UNSCR 1510 (2003) and 1623 (2005) to allow the security framework provided by ISAF to be progressively expanded to other urban centres and other areas beyond Kabul. These Resolutions, updated by UNSCR 1746 (2007) and 1817 (2008) and 1890 (2009) respectively continue to authorise ISAF under Chapter VII of the United Nations Charter to take all necessary measures to fulfil its mandate.
- The current mandate authorised by UNSCR 1890 expires on 13 October 2010.
- **OP WĀTEA.** New Zealand's force elements constituting OP WĀTEA have been assigned under the operational control of ISAF and are part of the ISAF coalition. The operations undertaken by OP WĀTEA fall within the ISAF mandate.
- **Military Technical Arrangements.** The conduct of operations during OP WĀTEA are also supported by the Military Technical Agreement (MTA) between the New Zealand Defence Force and the Government of the Islamic Republic of Afghanistan. This Arrangement expressly records that New Zealand personnel conducting operations in Afghanistan may need to use force commensurate with the threat to NZ personnel. This Arrangement was most recently validated and updated in August 2009.
- The status of NZ forces (including OP WĀTEA) is also governed by a Military Technical Agreement between ISAF and the Government of Afghanistan executed in 2002.
- **Exclusive Jurisdiction.** The combined effect of both MTAs is to grant NZ personnel immunity from the criminal jurisdiction of the authorities of Afghanistan by application of the status of "experts on mission" for the

purposes of the Convention on the Privileges and Immunities of the United Nations 1946, or by express waiver of criminal jurisdiction. The effect of this is that NZDF personnel in Afghanistan are subject to the exclusive criminal or disciplinary jurisdiction of NZ.

- **Provincial Reconstruction Team.** The legal mandate for the conduct of operations by OP WĀTEA falls under the same umbrella as the legal mandate under which the NZ Provincial Reconstruction Team conducts humanitarian and reconstruction efforts in Bamyān Province.

PSR(IC)3

LT COL
DD Ops Law

13 April 2010