



New Zealand
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OIA-2018-3126

29 June 2018

Simon Ewing-Jarvie

fyi-request-7951-bba225ac@requests.fyi.org.nz

Dear Mr Ewing-Jarvie

I refer to your request of 29 May 2018, to the Ministry of Foreign Affairs and Trade seeking, under the Official Information Act 1982 (OIA), a copy of the Arrangement of Cooperation for Operation Wasawasa 2017 and the extended scope for 2018 deployments. This request was transferred to the NZDF on 1 June 2018.

Enclosed is a copy of the letter between the Commander Republic of Fiji Military Forces and the Chief of Defence Force extending the period of deployment. Enclosed with this letter is a copy of the Arrangement of Cooperation for Operation Wasawasa.

You have the right, under section 28(3) of the OIA, to ask an Ombudsman to review my response to your request.

Yours sincerely

G.R. SMITH

Commodore, RNZN
Chief of Staff HQNZDF

Enclosures:

1. Letter dated 29 May 2018 and its enclosure



CHIEF OF DEFENCE FORCE
LIEUTENANT GENERAL T.J. (TIM) KEATING MNZM

29 May 2018

Rear Admiral Viliame Naupoto
Commander
Republic of Fiji Military Forces

Dear Viliame - Bula

I refer to the Fijian Government request for New Zealand Government assistance in protecting Fiji's Maritime Zones [Diplomatic Note 171/2018, dated 22 February 2018]. It was my pleasure to approve the consecutive deployments of HMNZS TAUPO and HMNZS OTAGO during the period June to October 2018 to the territory of the Republic of Fiji, its territorial waters and exclusive economic zone, to support your request.

To enable this deployment I request the Defence Cooperation Arrangement between the New Zealand Defence Force and the Republic of Fiji Military Forces signed on 2 November 2017 applies *mutatis mutandis* to the deployments of HMNZS TAUPO and HMNZS OTAGO in 2018. In the event that the patrol vessel changes, the Defence Cooperation Arrangement will apply to that vessel.

You will recall that personnel from the New Zealand Ministry for Primary Industries provided assistance with fisheries enforcement during Operation Wasawasa 2017. The Defence Cooperation Arrangement does not cover the Ministry for Primary Industries personnel, so it is requested that paragraphs 3, 4(1)(a), 4(3) – (10), 5(8), 6, and 8-12 of the Defence Cooperation Arrangement apply to Ministry for Primary Industries personnel as well as New Zealand Defence Force personnel, pending any separate arrangements entered into by the Ministry for Primary Industries.

If these terms are acceptable, I propose that this letter and your reply will constitute an arrangement between the New Zealand Defence Force and Republic of Fiji Military Forces, which will enter into effect from the date of your reply.

Yours Sincerely
T.J. Keating

Enclosure: Arrangement of Cooperation between the New Zealand Defence Force and the Republic of Fiji Military Forces concerning the deployment of a Royal New Zealand Navy Inshore Patrol Vessel and the New Zealand Contingent to Fiji, dated 2 Nov 17.

**Arrangement of Cooperation
(‘Arrangement’)**

Between



the New Zealand Defence Force

and



the Republic of Fiji Military Forces

concerning

**the deployment of a Royal New Zealand
Navy Inshore Patrol Vessel and the New
Zealand Contingent to Fiji**

Released Under the Official Information Act 1982

The New Zealand Defence Force

And

The Republic of Fiji Military Forces:

(hereinafter referred to as "the Participants")

Recognising the close relations between the Participants;

Having regard to the importance of military cooperation with Pacific nations;

Welcoming the opportunity to provide support to the authorities of the Republic of Fiji to conduct maritime patrol duties in the Fiji Exclusive Economic Zone;

Welcoming the opportunity to be available to support search and rescue, other border protection operations and to be available to conduct New Zealand Defence Force (NZDF) led training activities;

Desiring to engage in training exercises and operations that enhance border and resource protection;

Observing the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region;

Acknowledging the need to regulate the conditions for the temporary stay of members of the New Zealand Armed Forces in Fiji;

The Participants mutually arrange as follows:

**Paragraph 1
Definitions**

New Zealand Contingent means any one or more members of the New Zealand Armed Forces who are given permission to enter and remain within the sovereign territory of Fiji under Paragraph 3 of this Arrangement, including any members of a civilian component of the New Zealand Contingent who are not nationals of or ordinarily resident in Fiji. The New Zealand Contingent includes members of crew operating the Royal New Zealand Navy Inshore Patrol Vessel (IPV) and the shore support crew.

Operation Wasawasa is support provided by the New Zealand Defence Force to the authorities of the Republic of Fiji to conduct maritime patrol duties in the Fiji Exclusive Economic Zone and to be available to support

search and rescue, other border protection operations and to be available to conduct NZDF led training activities during the period from April to November 2017. Operation Wasawasa may be further extended in 2018.

Treaty is the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region.

Paragraph 2 Subject of this Arrangement

This Arrangement regulates the entry, temporary stay and departure of the IPV and the New Zealand Contingent on the sovereign territory of Fiji in respect of Operation Wasawasa.

Paragraph 3 Type, Scope and Duration of Stay

The competent authorities of Fiji give permission for the IPV and the New Zealand Contingent to enter and stay temporarily within the territory of Fiji for the purposes of Operation Wasawasa.

Paragraph 4 Conditions for Entry, Departure and Stay

1. The competent authorities of Fiji permit the New Zealand Contingent to:
 - a. Enter the territory of Fiji in vessels or aircraft, and remain on or over this territory in accordance with this Arrangement;
 - b. Wear military uniform while on duty; and
 - c. Possess and carry weapons during its stay on the territory of Fiji and during the conduct of Operation Wasawasa if necessary for the performance of official duties.
2. For any weapons, ammunition and explosives imported into Fiji under this Arrangement any licences or permits required will be granted in accordance with the laws of Fiji.
3. The New Zealand Contingent will be:
 - a. permitted to import, store, use and re-export its medical stores;

- b. permitted to render medical treatment to members of the New Zealand Contingent and to members of the authorities of the Republic of Fiji (or persons acting in the service of the Republic of Fiji) who are on board with the IPV or otherwise performing duties alongside members of the New Zealand Contingent; and
- c. exempt from any requirement to register its medical personnel with the competent authorities of Fiji.
4. The competent authorities of Fiji will:
- a. Facilitate the entry and departure of any New Zealand Contingent from a place or places mutually determined by the Participants; and
- b. Provide customs and immigration facilities to meet the IPV arriving in Fiji with members of the New Zealand Contingent.
5. The competent authorities of Fiji will not levy any charges against the New Zealand Defence Force for the use of land, facilities or services by the New Zealand Contingent.
6. The New Zealand Contingent will be permitted to enter and depart from Fiji on the basis of:
- a. A personal identity card issued by the New Zealand Defence Force showing the full name, date of birth, rank, service number, service and photograph of the holder; and
- b. An individual or collective movement order issued by the New Zealand Defence Force certifying the status of the individual or group as the New Zealand Contingent or member of that Contingent.
7. Passports will not be required by the New Zealand Contingent for entry into Fiji provided the conditions in Paragraph 4(6) are met and diplomatic clearance has been sought and provided. The competent authorities of Fiji will grant the New Zealand Contingent exemption from departure tax.
8. The New Zealand Contingent may import into Fiji, free of duty, any material which is necessary for the equipment, maintenance, operation and support of the New Zealand Contingent. The New Zealand Defence Force will endeavour to provide a detailed list of all the material to the Fiji authorities before the arrival of the New

Zealand contingent. The competent authorities of Fiji reserve the right to reject the importation into Fiji of any materials provided in the list of material, if the importation of such materials is contrary to the laws of Fiji.

9. Any official documents or classified material held by the New Zealand Contingent will not be subject to inspection. The status of any official documents or classified material brought into Fiji by the New Zealand Contingent will be determined and certified for the purposes of this Paragraph by the senior officer of the Contingent.
10. Any material imported under Paragraph 4(8) and (9) may be re-exported freely.

Paragraph 5 Criminal and Disciplinary Jurisdiction

1. The competent authorities of the New Zealand Defence Force will have the right to exercise within Fiji all criminal and disciplinary jurisdiction conferred on them by the laws of New Zealand over the New Zealand Contingent, including exclusive jurisdiction over the New Zealand Contingent with respect to offences punishable by the law of New Zealand but not by the laws of Fiji.
2. The competent authorities of Fiji will have the right to exercise jurisdiction over the New Zealand Contingent with respect to offences committed within the territory of Fiji and punishable by the laws of Fiji, including the right to exercise exclusive jurisdiction over the New Zealand Contingent with respect to offences punishable by the laws of Fiji but not by the laws of New Zealand.
3. In cases where the right to exercise jurisdiction is concurrent, the following rules will apply:
 - a. The competent authorities of the New Zealand Defence Force will have the primary right to exercise jurisdiction over the New Zealand Contingent in relation to:
 - (i) Offences against the security of New Zealand; including acts of treason, sabotage, espionage or violation of any law relating to the protection of the official information of New Zealand;
 - (ii) Offences solely against the property of New Zealand;

- (iii) Offences solely against the person or property of another member of the New Zealand Contingent; and
- (iv) Offences arising out of any act or omission done in the performance of an official duty by the New Zealand Contingent.
- b. In the case, of any other offences committed within the territory of Fiji, the competent authorities of Fiji will have the primary right to exercise jurisdiction.
- c. If the authorities having the primary right to exercise jurisdiction decide not to do so, they will notify the other authorities as soon as practicable.
- d. The authorities having the primary right of jurisdiction will give sympathetic consideration to a request from the other authorities for a waiver of their right where those other authorities consider such a waiver to be of particular importance.
- e. Nothing in Paragraph 5(3) of this Arrangement confers any right on the competent authorities of the New Zealand Defence Force to exercise jurisdiction over persons who are nationals of or ordinarily resident in Fiji, unless they are part of the New Zealand Contingent.
4. The competent authorities of Fiji and the New Zealand Defence Force will:
- a. Assist each other in arresting members of the New Zealand Contingent, where such arrest is necessary to allow the exercise of jurisdiction provided for in this Paragraph and, subject to Paragraphs 5(5) and 5(6), in handing them over to the authorities which are to exercise jurisdiction.
- b. Assist each other in carrying out all necessary investigations into offences and in the collection and production of evidence relating to any offence; and
- c. Notify each other of the disposal of all cases in which there is concurrent jurisdiction.
5. The competent authorities of Fiji will promptly notify the competent authorities of the New Zealand Defence Force of the arrest of any member of the New Zealand Contingent.

6. Where ~~the~~ competent authorities of Fiji arrest a member of the New Zealand Contingent, those authorities will, if so requested, release ~~him~~ or her to the custody of the New Zealand Contingent in Fiji pending completion of any trial proceedings, provided that the arrested person will, on request, be made available to the competent authorities of Fiji.
7. Where ~~an~~ accused has been tried in accordance with this Paragraph by a New Zealand military tribunal, he or she may not be tried again for substantially the same offence by any court of Fiji.
8. Where ~~a~~ member of the New Zealand Contingent is prosecuted under ~~the~~ jurisdiction of Fiji, he or she will, as a minimum, enjoy:
- a. a fair and public hearing by a competent, independent and impartial tribunal established by law;
 - b. ~~be~~ tried without undue delay;
 - c. ~~be~~ presumed innocent until proved guilty according to law;
 - d. ~~be~~ informed promptly and in detail in a language that he or she understands of the nature and cause of the charge or charges against him or her;
 - e. ~~have~~ adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her choosing;
 - f. ~~be~~ tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing. Legal assistance will not be provided for or funded by the Republic of Fiji;
 - g. ~~be~~ informed, if he or she does not have legal assistance of this right, and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
 - h. ~~and~~ examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

- i. if the member requires it, free assistance of an interpreter if he or she cannot understand or speak the language used in court;
 - j. not be compelled to testify against himself or herself or to confess guilt;
 - k. not be tried or punished again for an offence that he or she has already been finally convicted or acquitted of;
 - l. where convicted, have the conviction and the sentence reviewed by a higher tribunal according to law, if the member wishes such a review to be taken;
 - m. compensation where a conviction is reversed on the ground that new or newly discovered fact shows conclusively that there has been a miscarriage of justice, and the Fiji Courts have granted an order for the Republic of Fiji to compensate according to law the person who has suffered punishment as a result of such conviction, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her; and
 - n. Communicate with a representative of New Zealand and, where the rules of the court permit, to have such a representative at his or her trial.
9. The New Zealand Defence Force will notify the competent authorities of Fiji if any member of the New Zealand Contingent absents himself or herself without leave for more than 24 hours.

Paragraph 6 Telecommunications

1. The New Zealand Contingent may, insofar as is necessary to perform its duties, set up and operate temporary telecommunications facilities, including radio systems. The operation of radio systems by the New Zealand Contingent in Fiji will be subject to the approval of appropriate frequencies by the competent authorities of Fiji.
2. The New Zealand Contingent will take all necessary measures to avoid interference with telecommunication networks in Fiji by their own telecommunications or other electrical installations. The competent authorities of Fiji will take all lawful measures necessary to avoid interference with the telecommunications facilities of the

New Zealand Contingent by telecommunications or other electrical installations operated in Fiji.

Paragraph 7
Operation of the Inshore Patrol Vessel in Fiji

1. The IPV will be granted entry into, and will be free to operate within, the Fiji Fisheries Waters (as defined by the Fiji Marine Spaces Act, s 2(1): "all waters appertaining to Fiji and includes all internal waters, archipelagic waters, territorial seas and all waters within the exclusive economic zone").
2. The competent authorities of Fiji will grant the IPV an exemption from any charges or taxes that may otherwise be incurred as a result of using Fiji's port facilities.

Paragraph 8
Settlement of Claims between the Participants

1. Each Participant will waive any claim against the other for:
 - a. Damage to, or loss of, property owned or used by the Participant arising out of an act or omission of any member of, or other person in the service of, the other Participant done in the performance of official duty;
 - b. Damages for personal injury or death suffered by:
 - (i) A member or other person in the service of the authorities of Fiji; or
 - (ii) A member of the New Zealand Contingent.
2. The competent authorities of Fiji will waive any claim against the New Zealand Defence Force for the maritime salvage of any vessel, cargo and equipment owned by the Republic of Fiji and used by the authorities of the Republic of Fiji.
3. In all other cases, the Participant will consult with the other Participants for a settlement of claim.

**Paragraph 9
Exchange of Information**

1. The Participants will exchange information in accordance with Article 5(1) of the Treaty, as set out in Paragraph 9(2).
2. To the extent permitted by the Participants' national laws, regulations and policies, each Participant will provide to the other Participant information relevant for the purposes of enforcing Fiji fisheries laws and deterring breaches of such laws including but not limited to:
 - a. The location and movement of fishing vessels;
 - b. Fishing vessel licencing; and
 - c. Fisheries surveillance and law enforcement activities.

**Paragraph 10
Settlement of Third Party Claims**

1. This Paragraph will apply to any claim:
 - a. Made by, or on behalf of, a third party in Fiji, arising out of an act or omission of a member of a New Zealand Contingent done in the performance of official duty, which results in:
 - (i) Personal injury to, or the death of, a third party; or
 - (ii) Damage to, or loss of, property of any third party in Fiji; or
 - c. Made by, or on behalf of, a member of a New Zealand Contingent in respect of any act or omission of a third party in Fiji which results in:
 - (i) Personal injury to, or the death of, that member; or
 - (ii) Damage to, or loss of, the property of that member.
2. Any claim to which this Paragraph applies will be filed with the competent authorities of Fiji and considered, settled or adjudicated in accordance with the law of Fiji.
3. Where:

- a. Liability to pay compensation is established by the competent authorities of Fiji in accordance with the law of Fiji; or
- b. It is acknowledged by both Participants that liability to pay compensation would be established in accordance with the law of Fiji;

the competent authorities of Fiji will settle such claims by paying such reasonable compensation as the claimant is entitled to under the laws of Fiji. Such payment will be a binding and conclusive discharge of the claim.

4. Where compensation has been paid, or is to be paid under the terms of this Arrangement, the competent authorities of Fiji will communicate the amount of compensation to the New Zealand Defence Force together with full particulars of the basis for such compensation. The competent authorities of Fiji will discuss with and observe the reasonable instructions of the competent authorities of the New Zealand Defence Force as to the defence or settlement of the claim.
5. The competent authorities of Fiji will not settle the claim without the prior consent of the New Zealand Defence Force, which will not be unreasonably withheld.
6. The costs incurred in satisfying the claim, including the reasonable costs of the competent authorities of Fiji in dealing with the claim, will be apportioned between the Participants, as follows:
 - a. Where New Zealand is solely liable in respect of the claim, the New Zealand Defence Force will meet the costs of the claim in full; and
 - b. Where the Participants are jointly liable in respect of the claim:
 - (i) Where it is possible to apportion liability between the Participants, each Participant will meet the portion of the costs of the claim corresponding to the degree of the Participant's liability; or
 - (ii) Where it is not possible to apportion liability between the Participants, the costs of the claim will be borne equally by the Participants.
7. This Paragraph will not apply to:

- a. Contractual claims against a member of a New Zealand Contingent in his or her private capacity, which will be subject to the normal legal processes of Fiji; or
 - b. Claims arising out of the use of any vehicle of the New Zealand Contingent which is covered by an insurance policy taken out in accordance with the law of Fiji.
8. The competent authorities of Fiji and the New Zealand Defence Force will co-operate in the procurement of evidence for the fair hearing and disposal of claims.

Paragraph 11
Respect for the Laws and Customs of Fiji

1. The New Zealand Defence Force will take appropriate measures to ensure that any New Zealand Contingent:
 - a. Respects the laws, regulations and customs of Fiji;
 - b. Refrains from any activity inconsistent with the spirit of this Arrangement; and
 - c. Refrains from abusing any privileges granted under this Arrangement.
2. Except as provided in this Arrangement, no claim for immunity by a member of a New Zealand Contingent based on his or her status as a servant or employee of the New Zealand Defence Force may, in respect of any claim, proceeding or action, be raised in a court of Fiji.

Paragraph 12
Settlement of Differences

Differences on the implementation or interpretation of this Arrangement will be settled amicably through consultations, and not referred to third parties for mediation or arbitration.

Paragraph 13
Period of Validity, Amendment and Termination

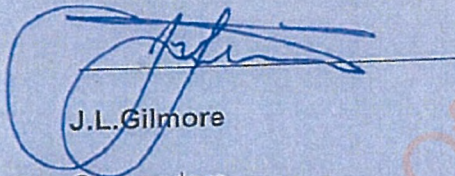
This Arrangement will come into effect on the date of the signature by the Participants. Except for Paragraphs 8 and 9 of this Arrangement, this

Arrangement will remain in effect until the New Zealand Contingent departs Fiji (scheduled to occur approximately 5 November 2017) or from the date on which a Participant receives from the other Participant 30 days' written notice of the intention of that Participant wishes to terminate this Arrangement. This Arrangement may be amended by the mutual written consent of the Participants.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Arrangement.

Signed at Suva on 2nd day November 2017.

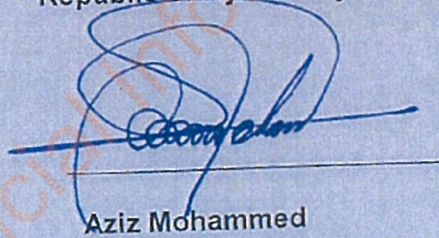
For and on behalf of the
New Zealand Defence Force



A handwritten signature in blue ink, appearing to read 'J.L. Gilmore', written over a horizontal line.

J.L. Gilmore
Commodore
Maritime Component
Commander
New Zealand Defence Force

For and on behalf of the
Republic of Fiji Military Forces



A handwritten signature in blue ink, appearing to read 'Aziz Mohammed', written over a horizontal line.

Aziz Mohammed
Brigadier General
Deputy Commander
Republic of Fiji Military Forces