

!CAL/SEC/~~PEACE~~/AFC

PSR(IC)3 (LGL)

PROTCTF 31/12/10

From: PSR(IC)3 (ISED)
 Sent: Monday, 3 August 2009 2:30 p.m.
 To: DPMC FPA (DSP1 Office); PSR(IC)3 (MEA); PSR(IC)3 (LGL); PSR(IC)3 (AMER)
 Cc: PSR(IC)3 (MIN); PSR(IC)3 (ISED); PSR(C)3 (ISED); PSR(IC)3 (MEA); PSR(IC)3 (MEA); PSR(IC)3 (LGL); PSR(IC)3 (AMER); PSR(IC)3 kevin.riordan PSR(IC)3
 Subject: RE: Afghanistan - question time, detainees
 Attachments: 2212065-v1-Detainees__SAS__media_PQs.doc

Part 32



2212065-v1-Detainees__SAS__med...

[SEEMAIL] [RESTRICTED]

Hello DPMC FPA

Please find attached a brief that provides responses to likely media/parliamentary questions on the issues of the SAS/detainees/US, as follow up to the recent Sunday Star Times/Keith Locke comments.

The brief has been approved by senior MFATers and by MOD/NZDF Legal.

Regards, PSR(IC)3

-----Original Message-----

From: DPMC FPA [mailto:dpmc@govt.nz]
 Sent: Monday, 3 August 2009 9:34 a.m.
 To: PSR(IC)3 (ISED); PSR(IC)3 (MEA); PSR(IC)3 (DSP1 Office); PSR(IC)3 (ISED); PSR(IC)3 (MEA); PSR(IC)3 (MEA)
 Subject: RE: Afghanistan - question time, detainees

Thanks PSR(IC)3 - the one thing specifically required will be comments or notes in respect to the issue raised at the week - ie some of this historical stuff - and then can add the more generic material on detainees - if that can be pulled together and across to me by 2pm that would be great - thanks, PSR(IC)3

>>> PSR(IC)3 (MEA) " PSR(IC)3 :> 3/08/2009 9:29
 >>> a.m. >>>
 [SEEMAIL] [RESTRICTED]

Thanks DPMC FPA

I'm sure you're right that this will be a topic for the post-Cabinet press conference today. As I am out of the office from 9.45am until about 3.30pm today I won't be around to help prepare the ground for that, so I hope the following is helpful.

PSR(IC)3, the detainees issue is pretty well covered in the media points you have been developing, plus there's a bit of language in the draft ministerial reply I sent across last Friday. The backgrounder ISED pulled together in preparation for the Kennedy Graham oral Qs a few weeks ago provides plenty of meat and veg' for the supplementaries. I think from this we could pull together a well honed answer and supplementaries quite quickly once we see the Q for oral answer tomorrow. PSR(IC)3 are you in a position to be the pointman on this today?

DPMC FPA the point you raise about information to media surrounding next week's announcements is one we have also been giving thought to, and I know PSR(IC)3 has mentioned it to PSR(IC)3 PSR(IC)3 apologies if I'm not up with the latest on this front). From my experience in the Gallery I would say the more information we can provide at the time of the announcement or if possible under embargo IN ADVANCE the better. The aim is to ensure firstly that media understanding of the range of issues the Review addresses is thorough and supported by readily comprehensible facts and

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timelines and, secondly, that it sees the SAS dimension within the context of NZ's goals in Afghanistan. This will be the single best chance we have to 'put the case' on Afghanistan and why we're there. Without this comprehensivity the risk is we will continue to fight a kind of rearguard against questions about the SAS, and 'centre court I yan' will get overlooked or underplayed.

Perhaps once you've had a further chat to PSR(IC)3 we might collectively look at pulling together some sort of media pack for distribution next Monday. Timing will be an issue, as this couldn't be finalised until after Cabinet has made its decisions, but much of the historical material could be prepared in advance. Media outlets, and in particular television, would appreciate as much advance notice as possible and that period of grace would, we hope, be reflected in more balanced, thoughtful coverage. (Of course they would also go to the Opposition parties for reax, but not until after the embargo was lifted).

PSR(IC)3

-----Original Message-----

From DPMC FPA [mailto:1@dpmc.govt.nz]
Sent: Monday, 3 August 2009 8:36 a.m.
To: PSR(IC)3 (DSP1 Office); PSR(IC)3 (MEA)
Cc: PSR(IC)3 (LGL); PSR(IC)3 (DSP4); PSR(IC)3 (CEO Office);
PSR(IC)3
Subject: Afghanistan - question time

PSR(IC)3 et al

With Sunday Star Times attention to detainees (and further in the Dom Post this morning) - we can expect there will oral questions in the House this week (probably from Green/Keith Locke) on this issue. Quite possibly for post-Cabinet press this afternoon as well.

As you'll know too - the PM will be away from Tuesday morning (and MFA is away too) - can expect that any oral questions will be put to the PM meaning that Bill English will have to cover as Acting PM.

Have been talking with PSR(IC)3 - what we'll need to do is get together some material today for use tomorrow (in all likelihood!) - PSR(IC)3 will have to manage in PMO in PSR(IC)3 absence from tomorrow.

I know you've been working on media background for 10 August - that will be very good background - but with some specific material required for the detainees issue specifically (assume this will come out of MEA/LGL).

Also on the question of the PM's announcements on Afghanistan for 10 August - question is the extent to which the report itself is released. We can expect the PM to be asked about this on 10 August - and it would seem inevitable that the media will want to keep pressing on details in order to extract as much detail of the report as they can (and to keep doing so if there's a feeling the Govt is holding back on any elements of the report). So will need some work on the press release for the PM, with at least a background providing reasonable detail of the review itself as appropriate.

Cheers, DPMC FPA



Afghanistan: SAS and detainees: Possible Media/Parliamentary Questions

Background to the SAS in Afghanistan

New Zealand has deployed the SAS to Afghanistan on three separate occasions, for twelve months in 2001-2002, and for six months in 2004 and 2005, since the September 11 2001 attacks in the United States revealed the degree of threat emanating from that country under Taleban rule. New Zealanders died in those attacks and others have been killed and injured in subsequent terrorist acts, most recently in Jakarta.

The NZSAS is held in very high regard internationally. In December 2004 1 NZSAS Group received the United States Presidential Citation for 'extraordinary heroism in action' during their first deployment to Afghanistan. In July 2007 Corporal Willie Apiata was awarded the Victoria Cross for New Zealand for 'exceptional bravery under heavy fire'.

The Sunday Star Times and Keith Locke - Green Party MP, have commented on the SAS' handing over of detainees to the US in Afghanistan in 2002, and the detainees alleged subsequent mistreatment by the US.

In the event that members of the NZDF detain persons, NZDF detainee handling procedures require that the person detained be treated humanely and in accordance with applicable international law, including the Geneva Conventions, while in NZDF hands.

In Afghanistan in 2002, the SAS briefly detained around fifty to seventy persons, who were then transferred to the US for processing. Following the transfer, the NZSAS Commanding Officer raised the issue of handling of detainees with the local US Command, and received assurances that the practice observed was consistent with US procedures prior to internment in a detention facility.

The SAS acted in good faith in 2002 in entrusting detainees, captured in a conflict zone, to the US - the only coalition partner with facilities for handling detainees and a State Party to the 1949 Geneva Conventions. Allegations of mistreatment by US forces of detainees in Afghanistan, Iraq and Guantanamo Bay, have arisen subsequently. In 2004 and 2005, New Zealand conveyed through diplomatic and defence channels to the US our expectations in writing that detainees are to be treated in accordance with international humanitarian law and human rights law. The current US administration, under President Obama, has placed an emphasis on the non-use of torture and the humane treatment of detainees, as evidenced by the decision to close its detention facility in Guantanamo Bay.

How will the SAS deal, in future deployments to Afghanistan, with people they capture or detain?

If the SAS were to redeploy to Afghanistan, and in the event they were again required to detain persons, it is most probable that the detainees would be transferred to the Afghan authorities. (In 2002, decades of conflict in Afghanistan had destroyed state infrastructure, including the country's legal system, and diminished the capacity of the police and armed forces to process detainees. Today, Afghanistan has a functioning legal system and the capacity to carry out the appropriate actions). Afghanistan is also a State Party to the 1949 Geneva Conventions.

New Zealand has received assurances from the Afghan government that all transferred detainees will be treated humanely and in accordance with international humanitarian and human rights law. Ensuring that standard of treatment being upheld would be of the utmost importance to New Zealand.

The NZDF would also inform the International Committee of the Red Cross (ICRC) of the fact that persons had been detained. Other steps include liaison with Afghan human rights groups.

Consideration of re-deployment of the SAS

Decisions about putting New Zealanders in harm's way are never taken lightly. These decisions always proceed from careful consideration of how New Zealand can best contribute to international efforts, in the case of Afghanistan under United Nations auspices, to deny terrorists the breeding grounds of political chaos and material hardship. Given Afghanistan's recent history of warfare and political tumult over several decades, New Zealand recognises that a stable future there cannot be secured without containing the threat of violence, which is once again on the increase. This is why New Zealand's continuing involvement will maintain a balance between security and development, between containment of violence and furtherance of social and humanitarian goals.

For this reason the government is conducting a review of New Zealand's future deployments in Afghanistan. I expect Cabinet to decide on the review's recommendations in mid-August. The eventual mix of military and civilian deployments will reflect Cabinet's view of how New Zealand can best contribute to the 42-nation effort to help Afghanistan combat the threat of violence so that civilian efforts can take root amid peace and stability. New Zealand is justifiably proud of how its aid contributions and the presence of NZ Defence personnel have helped Bamyan to become one of the most peaceful and prosperous provinces in Afghanistan. The requests for New Zealand again to deploy SAS

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troops reflects the high regard in which they are held by Afghanistan and our ISAF partners - precisely for their earlier contributions to creating that stability in less fortunate parts of the country.

What is the legal basis for the future deployment of the SAS?

The legal basis for New Zealand's current military deployments in Afghanistan, including the potential future deployment of the SAS, lies in UN Security Council resolutions mandating the International Security Assistance Force (ISAF), as well as the consent of the Government of Afghanistan.

Would the deployment of the SAS be a response to US pressure?

No. It is a fact that the US and other countries have expressed interest in our re-deploying the SAS, because our special forces have an excellent reputation, but the decision is ours. As I pointed out after the recent Jakarta bombing, and as the Afghanistan policy review makes clear, there is a link between events in Afghanistan and the security of New Zealanders.

Where will the SAS, if deployed, be based and what operations do you expect them to be engaged in?

It is not the practice to discuss operational matters such as those raised in your question and I intend to respect longstanding practice.

Won't sending the SAS make New Zealanders more likely to be targets of terrorists?

We have already seen New Zealanders killed and wounded in terrorist attacks. That risk continues. We already have NZDF personnel in Afghanistan performing a wide range of roles. I don't believe that adding an SAS presence would change the risk profile for New Zealanders outside Afghanistan.

What about the risks to SAS personnel?

The SAS are elite professional soldiers who are trained to recognise and to minimise risk as they go about their work. They have considerable experience of Afghanistan, and know the risks they may have to deal with.

Ministry of Foreign Affairs and Trade
3 August 2009

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