

Speech notes for Press Conference on Operation Burnham

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Chief of Defence Force, LTGEN Tim Keating

Good afternoon, thank you for coming.

The purpose of today's briefing is to run through the events around Operation Burnham, and the allegations contained in the book Hit and Run.

The book contains serious allegations, and we have taken the time to carefully look at what has been alleged.

Background to Operation Burnham, the attack on 3 August 2010 on PRT Patrol

After the attack on the New Zealand Provincial Reconstruction Team (NZPRT), which killed Lieutenant Tim O'Donnell, the NZPRT operating in Bamyan Province did everything it could to reduce the target profile of our people operating up the Shakera Valley and into the north-east of Bamyan Province.

We adjusted our routine, reduced movements to an absolute minimum, maximised night driving, and minimised time on site in threat areas.

The one thing the PRT couldn't do was to have an effect on the individuals that attacked Lieutenant O'Donnell's patrol. For the first time, the insurgents had a major success -- and they were well positioned to do so again.

We knew in a matter of days from local and International Security Assistance Force (ISAF) intelligence who had attacked our patrol -- and the villages they came from. This group had previously attacked Afghan Security Forces and elements of the German and Hungarian PRTs.

The valley they lived in (south of Tel Wa Barfak & parallel to the Shakera Valley) was well away from where the Hungarian PRT was operating, and an easy walk to both the border with Bamyan and positions where they could attack New Zealand PRT patrols moving on the road.

The New Zealand Government gave permission to use our SAS, who were operating out of Kabul with the Afghan Crisis Response Unit, to see if they could help enhance the New Zealand PRT security.

Greater security would allow us to continue with the great progress that the PRT mission had achieved to date.

The Bamyan success story was a threat to the Taliban, and it was clear that they were going to undertake missions to disrupt our success.

What followed was 14 days of reliable and corroborated intelligence collection that provided confirmation and justification for subsequent actions. Based on the intelligence, deliberate and detailed planning was conducted.

The bottom line, revenge was never the driver. Our primary concern was the security of our people, and that of the Afghani and other development people working in the Bamyán province.

The conduct of this operation, as with the numerous other New Zealand SAS operations in Afghanistan, would be led by the best intelligence available and executed with professionalism. New Zealand's Special Air Service had developed a strong international reputation, not only for operations in Afghanistan, but where they had operated on behalf of New Zealand in the previous decades.

A significant part of this reputation and why the force was favoured by successive governments, was the combination of the values that represented everything that we cherish as New Zealanders, and the precision with which they could operate on complex operations where there were often blurred lines between combatants and non combatants.

Hit and Run – Key facts and Conclusions

What I would like to do now is review some key elements of the Hit and Run book that appear to build a case against the New Zealand Defence Force for war crimes committed against the people of Khak Khuday Dad Village and Naik Village.

As you will note from the book, the authors have been precise in locating these villages with geo reference points -- so I have no doubt they are very accurate in the villages they are taking their allegations from.

The villages lie in the Tirgiran Valley some 2 kilometres north from Tirgiran Village. In straight distance this is like comparing the distance from Te Papa to Wellington Hospital. However, if you overlay the elevated terrain, you will see we are talking about two very separated, distinct settlements.

The authors have provided some clear and detailed accounts as to what their sources say occurred in Khak Khuday Dad Village and Naik Village, which provide the basis of their claims that there were serious grounds for consideration of whether war crimes had been committed.

Briefly some of these accounts include:

- Helicopter landing sites
- Location of houses that were destroyed
- Locations of where civilians were allegedly killed.
- Presumed location of an SAS Sniper with evidence presented of SAS ammunition and water bottles which were found at the site. A relationship was drawn between the Sniper location and the alleged killing of the individual Islamuddin, the School teacher.

The book provides detailed lists of the Dead and Wounded from Khak Khuday Dad Village and Naik Village.

It also provides detailed lists of the houses destroyed in Khak Khuday Dad Village and Naik Village.

The underlying premise of the book is that New Zealand's SAS soldiers conducted an operation on Khak Khuday Dad Village and Naik Village that inflicted considerable damage to property, deliberately killed civilians, which add up to war crimes that need to be investigated.

It seems to me that one of the fundamentals, a start point if you like, of any investigation into a crime is to tie the alleged perpetrators of a crime to the scene. Then we would examine the motive and means, and other scene evidence.

OPERATION BURNHAM

Let me now talk about the ISAF Operation Burnham in Tirgiran Village.

Planning

Operation Burnham was planned around a sound intelligence picture.

A feature of all NZSAS operations, was the involvement on the planning, conduct and subsequent debriefs and review of the operation by a lawyer.

New Zealand was one of the first in the ISAF coalition to adopt this practice of legal oversight -- which was aimed to provide a level of additional assurance to the commander and troops on the ground that their actions were within their operational directive and any offensive actions were within the Rules of Engagement.

Further, the plan was notable for its attention to avoid civilian casualties. Again, as I have stated earlier, this is why special forces soldiers are better suited to this type of operation as their training enables them to make rapid decisions in the face of a dynamic environment; to summarise, to use an appropriate level of force -- or not.

Conduct of Operation Burnham

I will now turn to the conduct of Operation Burnham.

The operation commenced on night of 21-22 August. The operation mission, which included New Zealand Special Air Service Soldiers, aimed to detain Taliban insurgent leaders who were threatening the security and stability of Bamyān Province and to disrupt their operational network.

Operation Burnham was conducted some 2 kilometres to the South of Khak Khuday Dad Village and Naik Village -- in a village known as Tirgiran village.

I now wish to introduce Squadron Leader Leon Fox who will give us an explanation of the map to ground analysis.

LTGEN Tim Keating – Detailed account of Operation Burnham

I will now provide you a detailed account of Operation Burnham.

The NZSAS and partner ground forces arrived at this Helicopter Landing Zone at 0030 on 22 August, 2010. They were provided covering support by Coalition Aircraft. The role of these aircraft was to provide protection to the ground patrols.

The ground force commander was an NZSAS Officer who controlled both the ground activities and provided clearance, after the appropriate criteria had been met, for any involvement of the aircraft. These elements were co-ordinated by an air controller in his location.

The criteria were:

1. that the target was positively identified as a direct participant in hostilities
2. that the person was satisfied that any collateral damage would be minimised.

On arrival of the ground patrols by helicopters, numbers of insurgents with weapons were identified leaving the village to take up positions on the high ground and within the village which were deemed, appropriately, by the ground force Commander to threaten the ground force. On meeting the necessary criteria within the Rules of Engagement, coalition aircraft were given permission to engage these insurgent groups.

Meanwhile, the ground forces entered a number of the buildings where intelligence had indicated insurgent leadership was staying. While the insurgents themselves had left, significant quantities of weapons and ammunition, including Rocket Propelled Grenade launchers, machine guns and pistols were found and destroyed on site.

During the destruction of the ammunition, two dwellings caught fire, one through exploding ammunition falling on the roof and one by an unattended cooking fire.

The SAS suffered one casualty who was injured by falling debris during the operation.

As mentioned previously, the planning went to great lengths to protect all civilians on the ground and this was followed through meticulously by the ground force during the conduct of the operation. Part of this included a procedure known as a callout, where before entering the village, the ground forces announced their presence and intention to the villagers through loudhailers, advising the villagers that this was a security operation.

The obvious downside of this approach is that it gave away the element of surprise and allowed the insurgents time to respond -- thereby putting the ground forces at greater risk.

A feature of the majority of SAS operations during this deployment in Afghanistan was the limited number of times SAS soldiers fired their weapons.

The two shots fired by the NZSAS ground force during Operation Burnham were targeted at an insurgent who was approaching one of the ground force positions. The insurgent was shot and killed.

The SAS forces left Tirgiran Village at 0345 on 22 August.

ISAF approved a second mission to Tirgiran Village on the night of 2-3 October 2010, following further intelligence confirming insurgent activity in the area.

The mission was completed by NZSAS and Afghan Security Forces. No shots were fired; the building searched was empty and the only explosive used was a small charge used to gain entry through a door. Once again prior to entering the building, a callout was used.

The ISAF Inquiry

Let me turn now to the ISAF-Afghan Government inquiry.

Some days after the operation, the Provincial Governor of Baghlan Province, Governor Mojid, received a delegation of villagers who claimed that “a very big operation had occurred with helicopters...that some landed and the operation was firing at civilians and left. The locals claimed that six civilians were killed, 4 adult males, 1 adult female and one child aged six. Additionally there were two adult females being treated in a local hospital for wounds.

I would like to introduce our Head of Defence Legal Services, Colonel Lisa Ferris, who will explain the ISAF investigation process.

Colonel Lisa Ferris - remarks

Good Afternoon,

At the outset it is important to highlight that the situation in Afghanistan at the time was considered by New Zealand to be one of a non-international armed conflict. Accordingly, the legal framework governing the conduct of members of the New Zealand Armed Forces was one regulated by international humanitarian law also called the Law of Armed Conflict. For the purposes of this brief I will refer to the Law of Armed Conflict as the applicable legal framework.

For many operations, the NZDF will also develop its own rules of engagement. These are rules drafted with input from legal officers and operators and signed off at the highest level. These rules can never exceed the limits of the Law of Armed Conflict.

All members of the Armed Forces, and indeed all members of this deployment, are required to undergo training in the Law of Armed Conflict – it is a baseline training requirement for all members of the Armed Forces. All members of this deployment undertook specific pre-deployment training that incorporated briefs and scenario based training involving the application of the rules of engagement. All personnel were issued with a Code of Conduct card which outlined their obligations under international law.

As part of this deployment, as CDF has highlighted, the NZDF was something of a pioneer in that we sent a legal officer to accompany the deployment at the tactical level. This had not occurred before to my knowledge in respect of special forces deployments. That legal officer, a qualified barrister and solicitor and experienced military lawyer was deployed with the NZSAS in order to provide briefings and on-going training on the law of armed conflict and the rules of engagement. The legal

officer was also present with the senior commander during Operation Burnham and provided a debrief to personnel after the event.

The Legal Officer deployed on that mission did not observe any activity during on in relation to Operation Burnham which gave them any cause for concern around compliance with the law of armed conflict or the rules of engagement.

It is a tragic reality that civilian casualties occur in times of armed conflict. Civilian casualties however, are however, not necessarily unlawful at international law. Subsequent information, received after Operation Burnham indicated that civilian casualties may have been possible. The International Security Assistance Force was required to assess all allegations of possible civilian casualties and was also required to notify such instances to the United Nations Assistance Mission in Afghanistan and the International Committee of the Red Cross. In doing so ISAF stood up an investigation team heading by an ISAF Brigadier General and supported by a team including an ISAF Legal Officer as well as Government of the Islamic Republic of Afghanistan representatives from the Ministry of Interior and Ministry of Defence. That report made recommendations as to any further action to be taken by ISAF and/or the troop contributing nations. The investigation team concluded that civilian casualties may have been possible due to the malfunction of a weapon system, as was made public by ISAF on 29 August 2010. The investigation team also concluded that members of the NZSAS appear to have complied with the ISAF commander's tactical directive, the rules of engagement, and accordingly the law of armed conflict. The investigation concluded no further action be taken. The NZDF was provided with a summary of that report and its conclusions.

Allegations of war crimes are a serious matter. The NZDF has a legal obligation to investigate allegations that are well-founded in accordance with section 102 of the Armed Forces Discipline Act 1971. The possibility of civilian casualties in an armed conflict does not necessarily mean that a criminal act has occurred. The Law of Armed Conflict accepts that sometimes mistakes and errors, such as an equipment malfunction, may happen in times of armed conflict.

If individuals have information pertaining to the conduct of members of the NZSAS then we encourage them to come forward and make a formal statement to the NZDF, either to a member of command or the New Zealand Defence Force Military Police. Likewise, the New Zealand Police also has jurisdiction in respect of certain serious crimes such as war crimes.

Thank you

LTGEN Keating - Concluding remarks

I would now like to conclude before taking questions.

New Zealand's Armed Forces have a reputation as a Force for New Zealand and a Force for Good. Our armed forces are deployed representing New Zealand into the most challenging of environments.

These are environments that the average New Zealander would not welcome being in – where there is often great risk to personal health and safety. It is a nature of service in our armed forces.

It is my responsibility to train your service personnel to give them a strong sense of values and ethics, so that they can represent New Zealand with the character that we would want displayed as New Zealanders.

The clear contrast to me between the book and what happened in Operation Burnham was that in all respects, the conduct of the New Zealand ground forces was exemplary.

It is always in our best interests that we, the New Zealand Defence Force, are the harshest critics of ourselves. This enables us to retain our professional reputation for which we are known internationally.

During Operation Burnham there was no cause for the Chief of Defence Force of the day to question to conduct of the operation.

Our service personnel remain committed to their profession and to achieving mission success – but always within the bounds of the laws of armed conflict.

I remain proud to serve in, and lead, the New Zealand Defence Force -- and stand up for them when they are on the side of right.

I remain proud of the role the New Zealand Defence Force undertakes on behalf of New Zealand both here and around the world. I am sure most New Zealanders are proud of our role also.