AFG/NZ/2/3

From: PSR(IC)3 (ISED)

Sent: Monday, 30 August 2010 11:53 a.m.

To: 'RIORDAN KEVIN, BRIG'; PSR(IC)3 (MEA); PSR(IC)3 (LGL); 'PSR(IC)3 '; 'PSR(IC)3 , Director, International Defence Relations, IDR (NZDF)'

Cc: PSR(IC)3 (ISED); PSR(IC)3 (ISED); PSR(IC)3 (MEA); 'PSR(IC)3 PSR(IC)3 'PSR(IC)3 Head (IDR)'

Subject: RE: Detainees/NDS/UK Judgment: Implications [SEEMAIL] ~~[RESTRICTED]~~

[SEEMAIL] ~~[RESTRICTED]~~

Hi all

I understand MFA was satisfied with the submission, and doesn't require any further information at this stage. However, on the copy referred to MinDef, Dr Mapp has written that para 4 requires a "detailed legal opinion from a senior level lawyer(s) from the Solicitor General's office".

Para 4 is as follows: "There has been media and political interest in New Zealand over the past few days on the UK High Court ruling and the implications for New Zealand – particularly regarding the NZSAS operating in Kabul mentoring and training the Afghan Crisis Response Unit (CRU). NZSAS members have not themselves detained anyone, but there have been occasions during which the NZSAS were "in the vicinity" when the Afghan CRU apprehended Afghan prisoners. While New Zealand's legal obligations on detainees are clear – i.e. they only extend to individuals detained by New Zealand forces (as is the fact that New Zealand personnel have not detained anyone to date) and the New Zealand Government has received written assurances from the Afghan Government regarding detainees, the UK judgment has generated questions about New Zealand's approach to the treatment of Afghan nationals arrested by Afghan authorities and transferred to the NDS facility in Kabul."

Next to the sentence about NZ's legal obligations, Dr Mapp has written "I do not agree with this. This is a developing area and is not 'clear'". MFA's office have asked us to follow up on the issue with Defence and MFAT Legal. Kevin, I don't think this requires further action, separate from the report/review you're putting together for MinDef, but just wanted to ensure you were aware of his views.

Cheers
PSR(IC)3

From: PSR(IC)3 (ISED)PSR(IC)3 @mfat.govt.nz]
Sent: Wednesday, 18 August 2010 1:04 p.m.
To: PSR(IC)3 (MEA); PSR(IC)3 (LGL); RIORDAN KEVIN, BRIG; PSR(IC)3 ; PSR(IC)3 n, Director, International Defence Relations, IDR (NZDF)
Cc: PSR(IC)3 (ISED); PSR(IC)3 (ISED);PSR(IC)3 (MEA); PSR(IC)3 S PSR(IC)3, Head (IDR)
Subject: Detainees/NDS/UK Judgment: Implications
Importance: High

Hi all

As discussed, Minister McCully requested yesterday advice within 24 hours on the British concerns about the NDS Kabul facility and the implications for NZ's own activities in Kabul. We tasked London to follow up with FCO and MOD contacts to get detailed information overnight, and Kabul has also provided helpful information from the UK Embassy there.

I'll shortly circulate to MFAT divisions a draft submission for your comments/clearance. We would also welcome NZDF/MOD's input - given the classification of this material, probably the easiest way is to come across and provide feedback on a hard copy. Kevin - can you let me know when would suit you this afternoon? PSR(IC)3 you'd also be very welcome.