

UNDER THE INQUIRIES ACT 2003

IN THE MATTER **A GOVERNMENT INQUIRY INTO OPERATION
BURNHAM AND RELATED MATTERS**

Date of Hearing: 4 April 2019, commenced at 10.00 a.m.

Inquiry Members:
Sir Terence Arnold QC - Chair
Sir Geoffrey Palmer QC

Counsel Appearing:
Ms K McDonald QC and Mr Andru Isac, Counsel Assisting
the Inquiry
Ms D Manning and Mr S Lamain appear for the Villagers
Mr S Humphrey appears for Jon Stephenson
Mr I Auld appears for Crown Agencies
Mr P Radich QC and Dr S Sheeran appear for NZDF
Mr B Gray QC and Mr S Worthy appear for Hon Dr Wayne Mapp

Venue:
Meetings on the Terrace
152 The Terrace
Wellington

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OPENING REMARKS

(Hearing opens with karakia and mihi)

SIR TERENCE: Welcome to this public hearing of the Inquiry into Operation Burnham and Related Matters. While this is the second public hearing that the Inquiry has held, it's the first in a sequence of three public hearings or modules that the Inquiry has scheduled on particular topics. I thought it might be helpful if I began by briefly explaining the purpose of this particular hearing, and the next two.

To recap, the Inquiry is dealing with substantial amounts of classified information provided to it by the New Zealand Defence Force, other New Zealand Government agencies and overseas organisations. It is also dealing with numerous witnesses who, for good reasons, require confidentiality to give evidence. The Inquiry has found that addressing these interests in circumstances where there are obvious pressures for a largely open process has been complex and difficult.

The Inquiry established a process for reviewing classified information and that has led to some additional information being made publicly available for this hearing. This is the Cabinet material now posted on the Inquiry's website, albeit with some relatively modest redactions.

While this review process is continuing and is likely to result in the disclosure of more currently classified information, much of the information relevant to the Inquiry's work is likely to remain classified and not be able to be disclosed. Given the combination of,

on the one hand, witnesses requiring confidentiality; information requiring protection in accordance with the Government's Protective Security Requirements, which are both onerous and restrictive; the Inquiry decided late last year that its evidence-gathering from witnesses would have to occur largely in private, rather than in public sessions.

However, the Inquiry does understand the public interest in its work and wishes to be as open as it can in the circumstances. In addition to meeting its obligations to core participants, the Inquiry wants to do what it can to assist public understanding of the issues. This led to the development of the programme of public hearings, of which this is the first.

This hearing is very much a scene-setting exercise. Apart from the question of location to which I will come shortly, the presentations largely deal with matters that are, from the Inquiry's perspective, givens. Crown Agencies and the Ministry of Foreign Affairs and Trade have each prepared a background paper on New Zealand's involvement in Afghanistan since 2001, following the 9/11 attacks. While the two papers cover similar ground, the Crown Agencies' paper is particularly concerned with the Cabinet decision-making process leading to the original deployment decision in 2001, and the MFAT paper focuses more on the steps taken internationally and their consequences in New Zealand, as well as dealing with the security situation in Afghanistan. Both papers contain useful chronologies. No-one will speak to them at the hearing. They are simply background. But both are available on the Inquiry's website.

In addition to these papers, two presentations will be made in person on the basis of written statements at this hearing. Those written statements will also be

publicly available on the Inquiry's website. The first presentation will be by Air Chief Marshal Sir Angus Houston, now retired but previously the Chief of Air Force and then the Chief of the Defence Force in Australia. He will give a high-level description of the military engagement in Afghanistan after 9/11, including the counter-insurgency strategy that operated during the NZSAS 2009 deployment, as well as referring briefly to matters such as Rules of Engagement and the Joint Prioritised Effects List (or JPEL) which will be the subject of later hearings.

The second presentation will be by The Honourable Dr Wayne Mapp, who was the Minister of Defence at the time of the deployment of the NZSAS to Afghanistan in 2009 and was, as it happens, present in Afghanistan when Operation Burnham occurred. He will set out the Cabinet and Parliamentary decision-making leading to the deployment of the NZSAS to Afghanistan in 2009. The Inquiry is grateful to both Sir Angus and Dr Mapp for making themselves available for today's hearing.

As I have said, some of the matters covered in today's hearing are not matters on which the Inquiry must ultimately reach a view. Rather, from the Inquiry's perspective, they are givens. For example, the Inquiry is ultimately not concerned with whether or not the NZSAS should have been deployed to Afghanistan in 2009, but with allegations about the conduct of the NZSAS during that deployment. Similarly, the Inquiry is not concerned with whether the counter-insurgency strategy implemented by coalition forces in Afghanistan was a good or a bad strategy, but rather with a number of NZSAS operations carried out within the context of that strategy.

While the merits of the deployment to Afghanistan or the merits of the counter-insurgency strategy are not

part of the Inquiry's Terms of Reference, they are important background or context for matters that are within the Inquiry's Terms of Reference. So, for example, a different approach might be taken to the use of a list like JPEL in an insurgency such as existed in Afghanistan than would be taken in a conventional war situation. That is why we thought it important that people have some understanding of that broader context.

As we noted in Minute No 8 in relation to this hearing, there will be no cross-examination of Sir Angus or Dr Mapp concerning their presentations. However, any core participant who has questions for either presenter may submit them in writing to the Inquiry and if they are relevant and appropriate, the Inquiry will forward them to the presenters to be answered.

Ms Manning, on behalf of the Afghanistan Villagers, has submitted some questions to us for Sir Angus Houston and we will take those up with him at the conclusion of his presentation.

To the extent that either presenter touches on matters that will be explored in detail in the second and third hearings of the programme, for example Rules of Engagement, JPEL lists and so on, questions on those matters will be better left to those later hearings.

And we remind core participants that they are entitled to make written comments in response to today's presentations within two weeks of the date of hearing and they will go up on the website, and they have been allotted time during the second hearing to make their own presentations on matters covered in this scene-setting hearing, to the extent they think them relevant and helpful to the Inquiry.

Finally, there is the issue of location which is to be addressed this afternoon. You will recall that after

Hit & Run was published, the New Zealand Defence Force said that the location identified in the satellite images in the book was incorrect and that the operation, Operation Burnham, in fact took place some distance to the south. The authors quickly accepted this, so that there is now no dispute about the general location.

However, the Inquiry was keen to understand where exactly, within the now agreed location, particular events were said to have occurred. Accordingly, the Inquiry had hoped that there would be two principal presentations on location at this hearing, one from the Defence Force and the other reflecting the authors' views, with commentary on the latter by the villagers. Our intention was that our independent technical expert, Mr David Napier, would observe the presentations and make his own presentation on location at the second hearing, with the core participants having the opportunity to engage with him in that process.

However, Mr Hager and Ms Manning indicated, for understandable reasons, that they were not in a position to undertake presentations on the precise details of location at this point. In light of that, we decided to modify the programme by not asking the non-Crown core participants to present on location today and by deferring Mr Napier's presentation until a further hearing on our provisional findings which is to be held later in the year. That hearing is addressed in more detail in Minute No 11, which is also available on the Inquiry's website. The result is that at the present hearing, today's hearing, the only presentation on location will be made by the Defence Force. There's a revised schedule for today's hearing to reflect that which I think has been handed to you.

In the second and third hearings of the programme, we intend to hear submissions and presentations from core participants and from independent experts on a number of important issues - mainly legal issues - that are relevant to the Inquiry's work. The submissions and presentations will deal with:

- the requirements of International Humanitarian Law (or the Law of Armed Conflict) in a non-international armed conflict such as existed in Afghanistan;
- aspects of the Rules of Engagement governing NZDF's activities;
- a state's obligations in relation to the detention of those captured, in particular, the obligation not to hand captives over to torture; and
- the use of JPEL in a non-international armed conflict.

As I have said, Sir Angus and Dr Mapp will mention some of the matters (Rules of Engagement, JPEL) that will be dealt with in detail in the second and third hearings but that will simply be by way of background. Close analysis of those topics will be held over to the later hearings.

I will end by repeating what I said at the outset of our hearing on process which was held late last year. The Inquiry's objective is to get at the truth about what happened on the operations that we have been asked to examine, and to assess whether the Defence Force was involved in a cover-up. As inquirers, we have to work within the constraints associated with the need for confidentiality of witnesses and the protection of classified information. We are convinced that the processes and the people we have in place will enable us

to achieve our objective of getting at the truth consistently with our obligations under the Inquiries Act.

Just before we start the formal proceedings, could I go through and take appearances of people who are here and point out to the media who is who.

So, first, we have Counsel Assisting, Ms Kristy McDonald, QC and Mr Andru Isac QC. For the core participants, we have:

Mr Radich QC, and Dr Scott Sheeran;

For the Afghan Villagers, Ms Manning and Mr Lamain; and for Mr Stephenson, Mr Humphrey.

In terms of others represented, we have Bruce Gray QC, counsel for Dr Mapp and Mr Worthy. And for the Crown agencies, Mr Auld. Thank you.

Right, we begin with Sir Angus Houston.

MS MANNING: May I just raise a housekeeping matter?

SIR TERENCE: Yes.

MS MANNING: I just have some housekeeping, if I may. I believe the Inquiry has some questions that we have prepared for Sir Angus. I have prepared copies for my learned friends. Can I just see if anybody still requires them because they are just at my desk here and I also have some copies for the media as well. That's the first thing.

And the second matter is I've spoken with my friends and Anna, I am requesting an in-chambers procedural conference with the commissioners today please during the lunch hour or perhaps immediately after the hearing concludes. There are some important matters of procedure that I would appreciate to be able to discuss directly with the commissioners.

SIR TERENCE: Well, as I understand it, you asked yesterday for some discussion about process for the taking of evidence from the Afghanistan villagers and what we intend to do is to write to you about that. We won't be able to do that immediately because, as it happens, both Sir Geoffrey and I are away next week but we will write to you the following week setting out the way we propose to deal with that and then we will be able to consider it and discuss it.

MS MANNING: Thank you, Sir. It's not just that matter. There are other interlinked matters concerning the taking of evidence from the villagers and I do consider there is a need to be able to have direct interaction with the commissioners on this. It's not best just left to an exchange of memoranda. The matters are complex, they are to do with procedure essentially.

So, I would appreciate if we could have some time. If not today, by way of a teleconference or I can return to Wellington but I think it's very important that we have interaction with the commissioners about this.

SIR TERENCE: Well, if you have issues that you want to raise apart from the one I've just mentioned, then you will have to set out in writing what it is that you want to raise and obviously other core participants will have to be involved in the process and so on.

So, it isn't a simple matter of our having a discussion with you if there are issues beyond the one that I have identified.

MS MANNING: I do appreciate that and that's why I'm suggesting while we're all here for Module 1, to

just have a brief in-chambers meeting over these procedural matters but I am in your hands, Sir Terence.

SIR TERENCE: Well, as I say, we really need to know what they are and you seem to be saying that there are more than just the -

MS MANNING: I am happy to outline. The procedural matters include, yes, the taking of evidence. Things that are becoming quite critical in terms of the timing of that, in terms of being able to get evidence from our clients in Afghanistan. There are very significant logistical issues. And interlinked with that, is the funding of that. The funding matters have still not be resolved for counsel for the villagers which is directly impacting on our ability to participate in this Inquiry, and these matters have been going on for nearly a year now.

And also matters concerning the reporting requirements for this Inquiry. I am aware from correspondence from the Attorney-General that an extension has been sought. It's not clear to us, has one been granted, and how long has been sought because that has direct impacts upon us as core participants in this Inquiry.

There is, with respect, a lack of clarity for us in terms of the work that we need to be preparing for, it's directly impacting upon counsel professionally and personally and things are really becoming quite untenable.

So, those are the matters I wish to raise. And with my friends, I am not seeking to have any kind of *ex parte* communications with the commissioners.

SIR TERENCE: Yes, well, I mean, as you know, funding is not a matter that we deal with, other than making the recommendation for funding. So, there are limits as to what we can do.

I think the best course would be to leave it until we return and we will write to you on the evidence gathering issue. I don't know where the funding issue is at but I understood there had been some resolution of it.

As per the extension of time and so on, I am sure the Government will make some sort of announcement about that.

MS MANNING: Thank you, Sir Terence. All I can do is formally place on the record that these delays could directly impact the Inquiry's ability to obtain evidence from the villagers in a timely manner. These delays are significant and important in that regard and I have done my best as counsel to raise them in a timely way with the Inquiry for months and again today, so I'm trying to discharge my responsibilities as counsel in this regard.

SIR TERENCE: Thank you. I can assure you we are very conscious of the issues about the evidence from the villagers in Afghanistan, so thank you.

**EXPERT PRESENTATION BY SIR ANGUS HOUSTON -
Formerly the Chief of the Defence Force in Australia**

SIR ANGUS: Operation Burnham Inquiry team heads, Sir Terence Arnold and Sir Geoffrey Palmer, participants and their representatives in the Operation Burnham Inquiry, ladies and gentlemen. Good morning.

First let me start by offering my condolences, sympathy and sorrow for the events that occurred last month in Christchurch. Let me also express how impressed and inspired I have been by the quality and sincerity of the New Zealand response - by your Government, your leaders, and your people.

Thank you for inviting me to offer some thoughts to this important Inquiry. It is important because it reflects our underlying belief in transparency and accountability within a democratic system - which Australia and New Zealand are privileged to live under and enjoy.

Before I start I think it is important to both contextualise and caveat my remarks as I appreciate the appearance by an Australian, ex-Chief of Defence Force (CDF) at an independent New Zealand Inquiry around actions by the New Zealand Defence Force may not be the norm. While I have been invited by Sir Terence and Sir Geoffrey to speak to the nature of conflict in Afghanistan from a military perspective, this should not be seen as me endorsing in any way any perspective or view on the Operation Burnham Inquiry or any of its participants.

My experience and background in Afghanistan is based on ten years in senior Australian Defence Force appointments (as Chief of Air Force and Chief of the Defence Force) over 10 years from 2001 through 2011. As CDF I was directly accountable to my Government for the actions, conduct and involvement of ADF personnel in Afghanistan, and when requested, providing options and military advice to Government for how the ADF and the broader Department of Defence could contribute to Government strategy and intent for Australian involvement in Afghanistan.

My remarks today are my personal recollections and thoughts; they do not represent the official view of the Australian or New Zealand Governments, or NATO or ISAF, the International Security Assistance Force, for that matter. My intent is not to pass comment or judgement on the why, how or what of policy, engagements and incidents; rather, I hope my remarks provide an insight into one aspect of what was and still remains a complex, multi-faceted international problem. More specifically I will not be casting any judgement on the central focus of this Inquiry - an operation by the New Zealand Defence Force. To do so would be entirely inappropriate.

Similarly I will not be discussing, commenting or revealing any information that I know to be classified or sensitive. This is not to hide behind a veil of secrecy but rather because I know and have seen the very real repercussions of security breaches. In our democratic systems there is a natural tension between transparency (the public 'right to know') and national security (the

nation's efforts to protect itself and its citizens). Each nation approaches this conundrum differently.

The views I will put forward today are mine, from my experience and from what I saw. I highlight, I never directly commanded troops on the ground in Afghanistan in operations, however, as the Australian Chief of Defence Force I retained full command of them and worked closely with our Chief of Joint Operations to provide effective oversight of their activities.

I conducted about 30 separate visits to Afghanistan where I engaged and discussed the campaign with the most senior coalition personnel, senior Afghan Government officials and our own service men and women. I regularly attended high-level international meetings for contributing nations where we engaged in detailed discussion on the Afghan campaign and discussed troop contributions. The welfare, the actions and the operations of our service personnel in Afghanistan were a part of my daily life as CDF. I am sure this is no different to any CDF with service personnel placed in harm's way.

Today I intend to offer some observations on Afghanistan and the counter-insurgency (COIN) effort initiated circa 2008/9. Noting the background papers already presented, I will not dwell on detail.

I will also cover a few areas that as a Chief of the Defence Force were common and enduring themes throughout the Afghanistan campaign from a coalition contributing nation perspective: command and control (C2), Rules of Engagement (ROE), the

Joint Prioritised Effects List (JPTEL) and civilian casualties.

Australian involvement

By way of context, I believe it relevant to the Operation Burnham Inquiry to recall Australia's military contribution to Afghanistan. This involved a diverse mix of military forces and capabilities deployed for over a decade and half. During my tenure as CDF we, like New Zealand, deployed a reconstruction capability, a mentoring effort, Special Forces, Chinook helicopters, individual augmentees, trainers and airlift support. And we amended their tasking, the structure of the forces, their command and control arrangements and their Rules of Engagement as the campaign progressed.

In contributing to Afghanistan, Australia and New Zealand shared a common perspective: we were both non-NATO partner nations, the only ones from the Southern hemisphere, similar domestic laws and approach to international agreements, and both making relatively modest troop contributions that required supplementation with other coalition assets. And we both shared similar, not identical, national reasons for committing military support.

Our ANZAC heritage as always underpinned our close relationship. While close, we did not slavishly follow each other, rather we were able to assist each other and maintain our independence at the same time. For me, these similarities allowed us to consolidate and clarify our understanding of what was happening in the broader NATO/ISAF campaign. We were able to test our thoughts and

proposals because we were in the main of common mind. In a large coalition such as ISAF this is extremely important. It was important also as it allowed us as relatively smaller stakeholders in the overall campaign to balance our perspectives and have them heard.

While we were both able to contribute highly trained and capable personnel we found it more difficult to furnish them with a complete set of enabling support assets and as such were very reliant on coalition, in the main US, support. This was particularly the case with rotary wing and specialist intelligence assets such as remotely piloted aircraft. Both of these were critical to the force protection of our forces and enabling them to complete more complex missions on behalf of ISAF.

Australia did deploy a number of helicopters but we assigned them to the Regional Command level such that they were able to benefit all ISAF forces based on priorities - we saw this very much as being a coalition team player, as to reserve them exclusively for Australian use may have been nice, but would not have been the best use for them and also been counter to our interests. This arrangement is part and parcel of being a member of the coalition - to receive support a nation rightly also had to be willing and able to provide support to others.

Afghanistan

To do justice to all parties involved in Afghanistan and indeed the people themselves

requires far more time than I have today in this presentation therefore I will keep my remarks brief and general in nature. Looking back over my tenure, the conflict and international commitment in Afghanistan can be seen in three periods.

The first period covers the years 2001-2002. This is the early stage and was underpinned by a very effective US-led Operation Enduring Freedom, commencing on 7 October 2001, under the banner of the International Coalition Against Terrorism (ICAT) and resulted in the initial defeat of the Taliban and al Qaeda in Afghanistan.

Our Prime Minister, John Howard invoked the mutual defence clauses of the ANZUS Treaty in deploying our initial contingents and our force composition (Special Forces) was aligned with many others in their focus on counter terrorism. This was about denying Afghanistan as a future safe-haven for terrorism in the wake of the September 11 terrorist attack.

In this period coalition forces were able to gain a firm foothold, operate in the main with complete freedom and dominated through its modern technologies and equipment. Over the following years this international counter-terrorism mission evolved into a country-wide effort focussed on critical areas such as security, governance, institutional development and reconstruction. While the International Security Assistance Force, commonly referred to as ISAF, was established by a UNSCR Resolution (number 1326 to be precise), in December 2001, its effectiveness was limited in the early period and its initial focus was very much security of Kabul and its immediate surrounds. The

United Kingdom initially took the lead as being the nation responsible for this force.

This was very much a period of Special Forces - their capability to reach remote areas, their self-sufficiency and their flexibility made them a preferred option for nations to contribute and the Operation Enduring Freedom mission aligned to these skills. They were able to have a greater reach, generally work in smaller numbers and draw on their specialist skills in reconnaissance, offensive action, outreach and also capacity building.

The pace of change and impact of Operation Enduring Freedom is reflected in the swearing in of Hamid Karzai, just over two months in, on 22 December 2001, as the Head of an Interim power-sharing government.

The second period covers the years 2003-2007. While the United States focus shifted to the war in Iraq, along with its significant military resources, much good work still occurred in Afghanistan. Key in this period was the gradual establishment of Provincial Reconstruction Teams, or PRTs, around the country, including the successful New Zealand PRT in Bamyan Province.

The ISAF mandate was expanded in late 2003 to cover provinces beyond Kabul and, importantly from a military perspective, NATO assumed leadership.

During this time operations in Iraq completely overshadowed Afghanistan and some of the gains from the early years were lost, particularly in the Pashtun-dominated south. The Taliban who were themselves overthrown by a 'US-led insurgency' a few years earlier regrouped among their traditional

tribal bases, resurged, grew in strength and launched an insurgency against the appointed Government and its coalition support.

The coalition effort was mixed, not unified and lacked cohesion; whereas the insurgency garnered local support, was relatively well organised, funded and had clear lines of authority and direction.

However, it took from late 2003 through to July 2006 for ISAF to assume responsibility of the whole of Afghanistan. It did this through a staged process: establishing first in the quieter north, expanding to the west and then the more challenging Taliban homelands of the south and east.

By the time ISAF had established its initial four regional Commands (North, South, East and West) in late 2006 and increased its strength to around 60 000, the insurgency had taken hold and the fighting became quite intense. Throughout this period we also saw repeated calls to the international community for additional troop and financial contributions.

What we also saw during this period was the incremental transfer of conventional forces, who had been operating under Operation Enduring Freedom, to the command of ISAF and the weight of international coalition effort start to shift towards ISAF and its mission.

Included in this was the transfer of all Provincial Reconstruction Teams (PRT) under the one ISAF Theatre military command. The PRTs were central to ISAF efforts across Afghanistan and were the heart of the counter-insurgency effort, or more widely known as COIN. PRTs were mixed teams of

military and civilian specialists whose skills and capabilities complemented one another. These teams facilitated delivery of tribal outreach, governance and development activities at the district and provincial level.

In no way a criticism, towards the end of this period (circa 2006) we also saw the start of the appointment of United States General Officers as Commanders of ISAF - hitherto the post was filled by European nations. Singularly the US was far and away the largest troop contributor to ISAF - their capabilities and scale were critical to the effectiveness of the whole of ISAF. This is significant because it registered a growth in prominence of ISAF. Its mandate was becoming the primary US focus in Afghanistan and it gained greater US support.

This small distinction was important in terms of messaging to coalition partners and ensuring a greater synergy between the two military operations - ISAF and Operation Enduring Freedom.

The period 2008 through 2011 marks the third period in the Afghan campaign from my perspective. Shortly after the establishment of Regional Commands, ISAF also established an ISAF Special Operations Forces (SOF) Headquarters alongside its Kabul Headquarters. An Australian and British one-star officer headed this in alternate years.

While the Regional Commands were geographically confined, the ISAF SOF HQ commanded, coordinated and synchronised operations of SOF from 15 to 20 nations, across Afghanistan. It was the means through which Commander ISAF (or COMISAF) was able to direct the use of coalition, including

elements of United States, SOF, each of whom had different and varying capabilities and each of whom came with different national caveats. Of note, ISAF SOF operated under ISAF command and the ISAF mandate, as opposed to Operation Enduring Freedom that was still ongoing with its extant remit and focus on counter-terrorism. Being under the ISAF mandate required these forces to adhere to a uniform set of guidelines for operational approvals, Rules of Engagement and targeting.

Uniquely, as a US officer, COMISAF both commanded ISAF and was also concurrently Commander of US Forces in Afghanistan.

In early 2009 additional force contributions from all ISAF contributing nations was requested to support the revised strategy for Afghanistan released by the Obama administration. This strategy recognised the deteriorating security situation in the south of the country and the concurrent requirement to increase the capability of the Afghan National Security Forces, the ANSF. Achieving these two goals was a focus of the ISAF COIN efforts, which I will move onto shortly.

The unified effort, greater coalition support and cooperation and a surge in troop numbers saw ISAF become one of the largest coalitions in modern times. This period in time also marks the beginning of the formal transition for security responsibility to the Afghan Government and ANSF.

What this very brief, high-level overview tells us is that Afghanistan was an extremely complex international issue: it was not solely a military problem; it was and still is a political problem. In Australia we wrestled with maintaining

an appropriate and sustainable commitment that both satisfied our national objectives but equally importantly was the best force for the circumstances in Afghanistan, and all the time balancing commitments to other operations.

Often we would be asked to provide additional forces, capabilities or individuals - no different I know to New Zealand and many other nations. These approaches would come through political and senior military channels, at the international meetings we attended or even direct from Afghanistan. Invariably we could not satisfy all requests. For each, however, we followed a process of testing the request against our current national objectives, checking it against Government direction and authorities and balancing with other requirements. It was standard that the Government of the day ultimately authorised any force contribution above what was currently mandated.

As with every other nation our forces carried out extensive pre-deployment preparation. As much as this focussed on the military capabilities, it also gave significant attention to the cultural, religious, demographic, historical and political factors. We sought to educate as best as possible our personnel in all things Afghanistan and Afghan.

As a military commander I remained conscious of the requirement for a whole-of-government approach, for the military effort to be supplemented and supported by a civilian effort. As difficult as the strategic circumstance was we should spare a thought for our personnel - civilian and military - because Afghanistan was also very much a human endeavour.

Afghanistan comprises some hostile, complex and inhospitable terrain; the extremes of climate; the lack of any formal government and governance as we know it; lines and means of communications and infrastructure were non-existent - the extent of paved road outside the capital Kabul was minimal; and the prevalence of the opium/narcotics trade and the crime this manifested. If these conditions did not make conditions easy for our forces then there was also a highly capable, organised and decentralised insurgency seeking to evict the foreign forces.

And I hasten to add this was not all about the military - the local Afghan population trying to go about their daily life contended with the same hostile environment, the insurgency and coalition forces. Afghanistan was and still is a complex operational space.

The environment that we placed our soldiers in weighed on my mind and I know on the minds of successive ministers and governments.

COIN - Counter Insurgency

In my mind General David McKiernan, COMISAF in 2008/09 commenced the turnaround in Afghanistan by initiating a COIN focus and highlighting the centrality of the civilian Afghan population to success. General Stan McChrystal then implemented the COIN focus in Afghanistan following his assumption as COMISAF in June 2009 and backed by a surge in force numbers. He built on the embryonic strategy put in place by his predecessor, General McKiernan, while General David Petraeus further expanded on the efforts of McChrystal. In essence,

Generals McChrystal and Petraeus super-charged COIN into a coalition, inter-agency, country-wide effort.

Through the efforts of all three, ISAF changed the way it did business. It refocussed its efforts on giving ISAF a renewed operational culture that had a unity of purpose and unity of action - it was founded on population-centric operations, enabled by a networked force of counter-insurgents (ISAF) at its core all with the central and unified purpose of protecting the Afghan population.

What this change in approach from focussing on the militants to focussing on the people, and winning and protecting the population, did was put the Afghan people at the heart of solving the problem. Protecting the Afghan people became the mission. On an operational level this entailed shifting from the tactical defeat of insurgents to the protection of the population.

COIN in any setting is an exceptionally resource-intensive warfare technique - it requires a whole-of-government effort, in particular by the host government. It cannot be done by the military alone. In Afghanistan it required a vast number of people and troops, which, notwithstanding ISAF's increased numbers, were never really reached.

I was engaged closely during this strategic transformation and directly saw the change it had on the operations conducted by our forces and how they conducted them. It particularly impacted our Special Forces who adapted the manner in which they approached their operations and coincided with a change for us from a Reconstruction Task Force to a Mentoring and Reconstruction Task Force.

COIN was the underpinning means by which ISAF looked to enact three broad lines of effort throughout: governance, development and security. These lines of effort were all supported by the now pre-eminent COIN focus of ISAF.

Winning the support of the population necessitated building their confidence in the rule of law, the official Afghan institutions and agencies, and the Afghan government. It entailed the force working with local Afghans to enable transparency and accountable governance. It included training Afghan National Police and the incorporation of civilian police officers in the overall ISAF effort.

Winning support also depended on the coalition, with and through the Afghan Government, demonstrating tangible progress in development. The centre of gravity in an insurgency is the support and will of the population. In Afghanistan, where the insurgents moved relatively freely and unrecognised within and throughout the population, the support of the people was critical to ISAF for security and building the legitimacy of the Afghan Government.

Whether it was simple infrastructure such as roads, bridges or schools or more complex undertakings involving sustainable local economic practices not reliant on the opium trade, development across Afghanistan was pivotal to winning over the population. Showing that a legitimate government was better at doing this than a Taliban shadow government required continual investment.

Finally, to win the population ISAF had to

protect them. This meant security operations, offensive operations and other operations targeted at specific individuals and organisations that threatened the population or threatened the viability and functioning of the Afghan Government. No one force or capability could do all three things, and equally operations in only one of these three efforts (governance, development and security) was never going to result in success. That is where the combination and cooperation of military forces (both conventional and Special Forces) and civilian agencies, including police, became so important.

The strategic goal of COIN was to defeat the insurgency that threatened the security of Afghanistan and the means by which it would do this was by winning over the support of the population.

As many nations did, Australia contributed to all of these elements over the course of the campaign. With the introduction of the COIN focus by COMISAF, I was extremely conscious of the operational relationship between our conventional and Special Forces because it was so important that our efforts along the security and governance/development lines were aligned.

They operated within the same Province and Regional Command (RC-South), however were under different command, control and tasking arrangements. Our Special Forces worked under the command of ISAF SOF whereas our conventional forces were under the operational control of Regional Command South. From an ISAF point of view this worked well however I was keen that, from a national perspective, they were able to support and

assist each other in achieving their missions. I believe this synergy was not uncommon across many of the nations who contributed to both sets of forces. There were many occasions during my tenure when the reason for an operation by our Special Forces was to enhance the security or mission of the reconstruction and mentoring task groups.

Our conventional forces focussed on the training, development and mentoring of the Afghan National Security Force. While holding excellent military capabilities they were not equipped, enabled or authorised to execute the higher-end targeting missions.

In this manner the operations of our Special Forces were designed to assist in creating a secure environment around the area of operations where our conventional forces focussed. Their operations, as with many other SOF operations, had a focus and end-state on preventing identified insurgent threats undermining the development efforts of our conventional forces within the province.

I would now like to turn to some of those enduring themes encountered as a coalition contributing nation. I will start with command and control.

Command and control

When I, with the authority bestowed on me as CDF by the Australian Government, deployed Australian forces to Afghanistan the command and control arrangements for them were always a key issue. The military has a unique language, not easily translated, for how it assigns forces and allows them to be commanded and controlled. Command in a

military sense has a very particular meaning. In a coalition setting such as ISAF this area is critical.

As a CDF, I always retained the full command of Australian forces - essentially this means I was always ultimately responsible for them and how they were employed. Importantly, it did not entail me directing their daily operations in Afghanistan. I delegated the authority to direct the operational tasking of Australian forces to Commander ISAF - he was the appointment legally charged and authorised to execute the ISAF mandate. He was responsible for how the campaign was carried out on the ground.

In delegating this authority I also prescribed under what circumstances they could lawfully be employed and what and how they were not to be employed - this was the same across all nations within the coalition. When committing its forces in a coalition, nations seek to balance maintaining control from a national perspective and permitting their employment from a coalition operational perspective. I hasten to add that these did not always align.

All nations contributing to the ISAF coalition assigned forces under specific command and control arrangements. These arrangements balanced who commanded the forces for what activity, or very simply, who could tell the force what they could and could not do. Likewise each force was assigned with specified freedoms and constraints. These freedoms and constraints quite rightly reflected the national policy of their governments.

For example, some forces would only be authorised by their government to participate in

training and mentoring roles, or not permitted to be used for directed offensive operations, or permitted or not permitted to be involved in counter-narcotic operations.

Similarly forces may be geographically constrained - that is, only authorised to conduct operations in a specified province, set of provinces or a Regional Command area. Alternatively they may have restrictions on involvement in aid programs or have only been assigned for a set duration.

These are national caveats and constraints, derived from national policy and individual government decisions - I stress they are not Rules of Engagement.

This is not unusual and ISAF and its commanders would seek to integrate and use respective forces to maximise their benefit while recognising their individual nation's contribution to the coalition. In the early stages of ISAF these caveats and restrictions imposed by individual nations made it difficult for ISAF to become a truly effective force, however cohesion soon came.

In the Australian example, our forces were assigned with caveats at various times about where they could operate and what type of operations they were permitted to undertake among many other things. These reflected government policy but did change over time as we reviewed our operations. Should they see a need or ISAF request them to conduct an operation outside these parameters then they would seek my approval. If not within my delegation, I would seek government approval.

This is what you could refer to as national command and every nation had a national command element in-country or national lines back to their capitals. The national commander of the force carried what is commonly known as a 'national red card'. That is, the authority to override the operational commander's directions on the basis of national policy. In coalition warfare this is incredibly important. In my experience I saw on many occasions the roles and authorities for operational and national commanders be confused by commentators and media.

Assigning one's military forces under the command and control of another nation is a significant and considered decision taken by a sovereign nation. It is a big step. It actually does not happen frequently.

COMISAF, and through him his authorised delegates, had the authority to either approve or not approve operations conducted by Australian forces. COMISAF also held the authority to assign or not assign additional coalition resources and assets to our Australian forces. As a rule when these additional resources are assigned they were done so for a specific task and duration and in the context of 'supporting' or in direct support or some other form of relationship that articulated respective roles. This occurs because with forms of command come differing responsibilities, powers and administrative requirements that are best retained by a permanent chain of command.

Additionally in many instances, COMISAF was also restricted to whom he could delegate the operational control invested in him by a country.

As the operational commander COMISAF also held the authority to dictate the processes, regulations and requirements for forces to follow. In this way he was the unifying appointment, to whom nations assigned forces. COMISAF was an international appointment so we were not assigning our forces for use in operations to a US General for use by the US, rather we assigned forces to a coalition appointment with a chain of command back through to NATO.

I highlight though, through our national command and my retention of full command, we could at any time veto a proposed operation of Australian forces. The converse also held true - should Australia for some reason wish to conduct a specifically Australian-focussed operation then COMISAF concurrence would have been required.

Working as part of a coalition has its unique challenges from a national perspective and one of those is garnering adequate and sufficient support for tasks that a nation perceives to be in its national interest. I hasten to add this national interest generally involved protection of one's own forces.

Let me now move on to Rules of Engagement.

Rules of Engagement

I would like to touch on a topic that is sometimes misunderstood, and sometimes represented incorrectly or too simplistically.

The decision by a nation-state to use military force is one that is given significant and detailed consideration given the potentially lethal consequences of any decision. This does not make

it wrong, but it emphasises the importance for having a governing mechanism around that use of force. Rules of Engagement, or ROE, are a fundamental control mechanism in the use of military force. ROE are not solely the preserve of the military and they are not a means by which the military authorises itself.

When Government directs the deployment or use of its military it is done so with objectives, restrictions, caveats and freedoms in mind. It is using the military as a means of enacting Government policy. In general, Government aims to provide the military with sufficient freedom to actually complete the task it's been assigned for but it also caps how much force it is willing to be used.

Similarly the military seek to gain sufficient authority to use the required force it believes necessary to accomplish its assigned task, while also having mind to the safety and protection of its own people. The use of military force is also governed by many international or humanitarian agreements binding on the Government, such as International Humanitarian Law and the Laws of Armed Conflict enshrined through the Geneva Convention.

ROE are directions endorsed by Government and issued by commanders, which delineate the circumstances and limitations within which military force may be applied to achieve military objectives. They do not inhibit or replace, but are part of, the command function. ROE may be framed to limit certain actions; alternatively,

they may authorise actions to the full extent permissible under domestic and international law.

Many factors are considered when drafting ROE. Some of the primary factors include: domestic and international law; political and military end-states; operational considerations; and diplomatic factors. Each circumstance will modify the weighting given by decision makers to these primary elements.

ROE provide authoritative guidance on the use of military force. This force must be reflective of the law, even though the ROE are not the law. International and domestic laws limit armed forces to actions that are lawful and therefore permissible. The Government and generally the chief of a defence force place further limitations upon the military force by issuing ROE.

Another way of viewing this is through military capability. The military has the capability (through its personnel, equipment, technology, and systems) to undertake a vast array of actions. Only some of these actions are permissible under law in a given circumstance - the military cannot simply employ all its capabilities without regard for the law. ROE then form a subset of what is permissible under law - they further caveat and restrict what military force can be employed.

The ROE reflect the values and law of a nation. Some nations may not hold the sanctity of human (civilian) life to the same level we do, or subscribe to the same international conventions as us, or place a higher premium on operational outcome in a set situation, and therefore may permit their military proportionate latitude.

In my experience the formulation, drafting and authorising of ROE for our deploying forces was one of the most complex, considered and scrutinised processes.

There was input from lower level commanders, military and civilian legal officers, policy officers, senior military officials and indeed the Government itself. It is a highly collaborative process. Any requests to change the ROE were equally stringently scrutinised and tested.

Ensuring your military forces have appropriate ROE when deployed unilaterally is one thing; it becomes manifestly more complex when deployed within an international coalition. Every nation, quite rightly and appropriately, develops and issues its own national ROE. Invariably national ROE do not neatly align; but as a rule national ROE enable that nation's military to achieve what their national Government intended when deploying them.

That ROE change should not be surprising. Should the situation on the ground change, government policy change or more relevant information become available then ROE should be reviewed.

What is common is that nations dictate that their national ROE always takes precedence over any other forms of ROE. Therefore when forces from various nations come together to execute an operation there will be numerous ROE applicable simultaneously. It has become common practice for coalitions of military to also formulate their own ROE. And in this case ISAF also developed ROE.

As with national ROE, these ROE are also constructed giving a view to such things as the lawful mandate of the military force, the authorised mission and tasking of that force, the political and military objectives of the coalition, and the operational environment. These ROE reflect the Operational Commander's intent. In this case in Afghanistan, Commander ISAF developed his own ROE. He does so bearing in mind how he wishes to employ military forces in support of his directed mission. As a

contributing member to that coalition, individual nations were required to also adhere to these ROE in order to conduct operations within ISAF's area of operation and control.

On occasion national ROE and ISAF ROE will conflict, be contradictory or not aligned. And there was not always a corresponding ISAF ROE for a national ROE. In instances such as this we needed to decide:

- to change our ROE to match ISAF; or
- to maintain our ROE and thereby place a constraint on or maintain a freedom on what our forces were able to do; or
- to amend ROE such that they held to original intent but aligned with operational requirements in Afghanistan.

Over the duration I believe we did all of the above at some time over the 15 years.

Without highlighting specifics, an example of differing ROE within the international community is the firing of warning shots. Some nations authorise them, some do not; some nations stipulate a requirement; and some nations offer the option. There is very good reason for any of the above options and the decision is based on such things as the individual nation's system, their doctrine and training and their assessment of risk. What is common, almost universal, however is the inherent right of the military to use force in self-defence.

A question posed frequently is why are ROE not released publicly? Primarily and very simply this is for the protection of one's own forces. Nations and their military forces closely guard their national ROE for good reason.

ROE inform a soldier, sailor, or pilot both what

they can do, but also what they cannot do. They dictate when they are able to use force and to what extent (lethal or non-lethal) and when they are not able to use force. Should an adversary know and understand when, how and to what degree a soldier may respond in any given circumstance, that adversary is able to temper and contrive his actions to his advantage. I can assure you that this was no more real than in Afghanistan. In the already ambiguous, chaotic and dangerous environment that war presents, soldiers should not be further exposed to any more risk to their lives than absolutely necessary.

Let me now move on to the Joint Prioritised Effects List or as is commonly known, JPEL.

Joint Prioritised Effects List (JPEL)

In any military campaign or operation there are invariably more tasks and things to do than there are resources available. This is true whether it be human resources, financial, equipment or systems. Afghanistan was no exception in this regard and commanders at all levels continually re-assessed priorities and their ability to complete tasks. As a general rule, the more scarce or more strategically important the military asset, the higher the command level at which it was held.

Our forces would deploy with much of what they required, however in order to undertake some types of missions for which they were capable they required additional support. The additional support we called 'enablers' as they enabled the force to complete the assigned task. Aircraft, helicopters, and intelligence assets are some of the resources whose allocation was prioritised by higher level commands, namely the

Regional Commands or Headquarters ISAF, and for which we required support.

I have seen the term 'JPEL' widely referred to, and used in the media, academia, books and within our own militaries and it is often used without relevant and important context and understanding. The JPEL, or the Joint Prioritised Effects List, is essentially what the title conveys. It is a mechanism, a process, through which military commands and staff seek to prioritise their efforts and resources. It is a very formal, highly oversighted and controlled process. In different doctrines there are varying approaches however all fall under a targeting banner. In a dynamic and fluid environment like Afghanistan it assisted in giving order, rigour and process to what a force was using scarce military resources for. A JPEL is part of a broader military targeting methodology and doctrine.

A target in a military sense could be an area, an object, a capability, a person or even an organisation. Effects in a military sense refers to what the military force (the commander) wants to achieve by conducting a specific operation - it can vary from seeking information, denying access or movement, surveilling to neutralising, or killing a target. The process underpinning the JPEL sought to assign the right asset to the right target at the right time.

It also sought to ensure that those persons or capabilities or targets presented on the JPEL were legitimate and lawful targets in accordance with all ROE and informed legal advice. This includes ensuring that this form of targeting did not violate the Laws of Armed Conflict (LOAC).

By way of example, the insurgency in Afghanistan

relied upon a variety of actors for its success: at one end there were the fighters themselves, those that conducted the operations against the Afghan and coalition forces while at the other end were the key strategic leaders who commanded and directed when, where and what operations would occur. In between there were facilitators: people who supported the insurgency to achieve its aims. These included: specialist Improvised Explosive Device bomb makers; suppliers of materials, explosives and ammunition; local area commanders and leaders; people who transported, accommodated and logistically supported; and people who arranged financing, just to name a few. It is important to understand that the insurgency was a system.

Therefore our forces would seek to target vulnerabilities in that system wherever they occurred and whenever they were able to obtain the appropriate resources. This is where a JPEL comes to the fore. I can appreciate how people can perceive this process differently, however we should remain cognisant of the unique and difficult situation Afghanistan presented. The war in Afghanistan did not involve a fight against a known and formally organised adversary - it was not conducted against formed military units and adversaries wearing uniforms who had set orders of battle of which we already had well-documented intelligence.

Rather there were very few set piece battles. There were no easily demarcated front lines. This was irregular, guerrilla, asymmetric and counter-insurgency warfare. Quite literally a soldier could be standing beside someone in an Afghan village who hours or days later might take up arms against him. Similarly there was a vast civilian population whose tribal and ethnic

structure was intricate and complex.

Over a long time coalition forces and ISAF gradually increased their local knowledge and understanding of their specific geographic areas and the variety of stakeholders that lived there. Some stakeholders supported the Afghan Government and the international coalition, some of these did not. From an intelligence and local area knowledge perspective I always found that PRT members were as well versed as anyone and by virtue of ongoing continuing presence were able to deepen their knowledge.

From a national perspective the JPEL and other formal targeting processes used by ISAF gave a degree of assurance. The process and requirements were rigorous and sometimes restrictive. In this regard, there was a requirement imposed on our forces to confirm at a set interval that the particular target listed on the JPEL still met all criteria - that is, the target was still active in fighting against the Afghan Government and ISAF.

For as much as the process of a JPEL sought to target it also sought to discriminate; it assisted the coalition to separate the insurgents from the broader population in a chaotic and ambiguous environment.

A few words about civilian casualties and incidents.

Civilian casualties and incidents

The single greatest setback to operational success in Afghanistan was civilian casualties. By far and away it is the innocent civilian population that has suffered the most in Afghanistan. For every new well put in, new school opened or road paved, the death of a civilian set the cause back. In terms of COIN success

this was magnified. Potentially for every civilian killed by coalition forces, the saying went you created five to ten more insurgents.

Sadly, we also know that on occasions the allegations of civilian casualties was also used by the insurgency as a very effective propaganda tool. This at times made the inquiry into allegations extremely difficult.

Within our own planning processes and then again within the ISAF operational approval process the protection of civilians and the prevention of civilian casualties were critical components. At each stage of the process their welfare and safety were paramount and indeed consideration of the impact and consequences for the civilian population were at various times go and no-go criteria. Personally, I can attest to our command chain not permitting some operations and actions because the potential risk for civilian casualties or damage to civilian properties or infrastructure was too great.

Notwithstanding these precautions and training, regrettably civilian casualties still occurred. Without doubt the people most affected by these were the immediate families and friends.

In the early years we did not have any formal scheme for offering recompense - not that one can ever recompense a family for the death of a loved one or place a value on a human life - however in time we did devise a policy that allowed us to offer compensation payments for destruction of property, injury or death. It is hard to qualify the success or otherwise of this but it was the right thing to do.

Civilian casualties also impacted the soldiers involved. As a commander this was also on my mind, as

I know they did not go to Afghanistan to cause the death of innocent people. And I know we now have some soldiers still bearing those scars. Again I emphasise this is secondary to the pain of families but still a tragic consequence of war.

In Australia, while I was CDF we conducted an inquiry or investigation whenever there were confirmed or alleged civilian casualties. This was important from a transparency and accountability aspect. This was in addition to any other investigation by other bodies or agencies, including ISAF, the United Nations, and the International Committee of the Red Cross.

Separately I would add that in Australia there is currently an ongoing independent inquiry by the Inspector-General of the Australian Defence Force into rumours of possible breaches of the Laws of Armed Conflict by members in Afghanistan between 2005 and 2016. This Inquiry is ongoing and I am not privy to it and therefore unable to offer any further comment.

Conclusion

Afghanistan represents one of the most complex, ambiguous, difficult and challenging operational environments that modern military forces have operated. It has a harsh physical terrain and environmental factors, complex human and cultural terrain and involved an adversary that employed irregular, guerrilla and asymmetric methods.

These all combined to place pressure on an international coalition effort - a coalition comprising fifty one nations, each with differing national objectives, policy, ROE and caveats for the employment of their military forces. With over 130,000 troops from NATO and non-NATO nations, ISAF was a significant

undertaking by the world community.

It took some time to reach full operational effectiveness but once there it was able to bring together the contributing nations under a common banner, with a common goal and governed by common rules, practices and procedures.

Thank you for your time this morning and I hope this has been helpful in providing context to the military contribution to Afghanistan.

I apologise about my voice. I shouldn't have gone for that run this morning.

SIR TERENCE: Thank you. We have a few questions.

Would you like to sit down or are you happy to stand?

SIR ANGUS: I am happy to stand.

SIR TERENCE: Just a question about the counter-insurgency strategy COIN, was that a developed strategy that had been applied in other conflicts or was it developed particularly to address the situation in Afghanistan?

SIR ANGUS: Well, COIN has been applied in other conflicts. I suppose the model that is probably used to demonstrate how successful it can be is the counter-insurgency campaign that was mounted in Malaya in the late 1950s when there was a Chinese led, communist Chinese led insurgency within Malaya. These were Chinese who were communists who came from Malaya, not from outside.

And that model over a period of years the Malayan forces led by the British at the time defeated the insurgents and as a consequence of that, Malaya then went on to become Malaysia, the Malaysia we know today.

So, that's often used as the exemplar as to the fact that counter-insurgency can work.

There's a vast body of work that's been done on counter-insurgency warfare. General Petraeus, who was the Commander of ISAF, was very well schooled in all of the theory, doctrine and the practice of counter-insurgency warfare, and I guess the way the campaign was mounted was classical, in terms of the approach in Afghanistan. And sometimes referred to as the first thing you do is shape the environment. You then clear the environment that you are seeking to control. Once you've cleared it, you hold it and then you put in your development teams to build. So, it's shape, clear, hold, build, in very simple terms.

And that was essentially what the coalition was trying to do in southern Afghanistan.

Now, in terms of that sort of operation, it is very resource intensive. The numbers you need to basically succeed in counter-insurgency warfare are very large indeed and there is a ratio there, I don't have it in the back of my mind, but certainly you needed a vast number of troops. And that was the reason for the surge ordered by President Obama. That was designed to bring in more troops to give Commander ISAF the resources he needed to mount a successful counter-insurgency campaign.

So, yes, in answer to your question, there is a lot of background. There are some cases of success, cases of failure, in the history of counter-insurgency warfare but the principles that were applied were long-standing and I think applied in a particular way by the three generals that I mentioned in my opening remarks.

SIR TERENCE: So, protecting and winning over the local population is critical to this strategy which brings me, I think, to the questions that Ms Manning has raised because a commander in Afghanistan would have placed a choice between a

daylight operation and a night-time operation. Are you able to describe the sort of considerations that were going into choosing one over the other?

SIR ANGUS: Well, I can do that but I have the tactical directives of General McChrystal and General Petraeus here and I would table those for your consideration because they very clearly put protection of the population as the central consideration in the operations.

So, there's a lot of - I won't go through it but essentially in the use of force, it gives very clear guidance what considerations should be taken into account. And one of those is, of course, the central consideration is the protection of the population. So, I'll table these for you to be able to have a look at that.

SIR TERENCE: Thank you.

SIR ANGUS: But in regard to day or night raids, the night raids were, I think, very successful in keeping the Taliban leaders, bomb-makers, key people in the insurgency off balance because they had to keep moving around. They couldn't stay in any one place for too long, lest it be known that they were in a particular location and that there was the possibility of the coalition coming after them.

So, in terms of the effectiveness of those raids, they kept the adversary off balance. Essentially, the coalition could mount those raids at a time of their choosing, so it gave a tactical advantage. And, of course, you wouldn't have had that tactical advantage if you tried to mount the raid in the day-time.

And essentially, these night raids were used to target high priority targets on that JPEL list, that is insurgency leaders and bomb-makers.

Now, in terms of Australian operations, we lost quite a few people to Improvised Explosive Device attacks. I might add, the civilian population were also suffering losses from these bomb attacks. So, whenever we identified a bomb-maker in its location, we went after them because not only was it tactical reasons, but essentially there were civilian population and force protection considerations in going after the bomb-makers. Eliminate the bomb-makers, you make the environment safer for the civilian population, you make it safer for our own troops.

And, of course, there's a strategic dimension to that because back home every time you have a casualty, the population becomes more concerned about the operations that have been conducted and the threat which our people are having to deal with.

So, those night raids were done very carefully. In fact, you know, again, there's guidance there. When you look at General Petraeus' directive, he says, for example, this is one of the many things that he directed, pursue the enemy relentlessly, together with our Afghan partners, get our teeth into the insurgents and don't let go. Seek out and eliminate those who threaten the population. Don't let them intimidate the innocent. Target the whole network, not just the individuals. That was best done by doing night attacks against the people, the high priority people that needed to be dealt with.

And in terms of the planning, those operations were always intelligence-based. They wouldn't be mounted without good intelligence. They were very thoroughly

planned and, of course, there were checks and balances on all levels on those operations.

With General McChrystal, General McChrystal came and the directive he gave in his directive whenever those sorts of operations were mounted, Afghan partners had to go through the door first and do the initial part of the assault on the location where the bomb-maker might be or the leader might be.

SIR TERENCE: Did you see and did you consider that night operations posed a greater risk to the civilian population than day operations?

SIR ANGUS: I think any operations that you conduct of an offensive nature in an environment like Afghanistan there are risks. Whether there's more risk in doing an operation during the day-time versus night-time, it's very difficult to compare the two.

Put it this way, when we mounted those operations they were planned very, very carefully to mitigate the risk to the civilian population and whilst I can give you an example of one that went wrong, most of them, most of them were conducted without significant casualties to the civilian population.

The one that went wrong was one that occurred on the 12th of February 2009. It was very much on the public record. I was questioned very closely about that by our Parliament during a Senate hearing and what happened there was essentially the use of force was considered to be excessive by the inquiry officer who had a look at the circumstances of the civilian casualties and on the basis of his recommendation, charges were laid by the military prosecutor against three individuals who had been involved in the attack. That was one that went wrong and essentially we investigated it fully, we put in place

different ways of doing business to ensure the same thing didn't happen again.

So, yes, there have been incidents but there were incidents, you know, of civilian casualties during our day-time operations as well.

And if you want any more information on the 12th of February, I'd be happy to provide more reporting and so on, so you can get a sense of what happened on that particular date.

SIR TERENCE: Thank you. I just have one other matter that I wanted to raise before I'll ask Sir Geoffrey if he's got some issues.

You made the point that the Australian forces, like the New Zealand forces, relied on US air assets essentially and you made the point that the ISAF command would prioritise particular operations. So, does that mean there was, in a sense, it's not the right word but a competition, if you like, or there weren't sufficient assets to do everything that everybody wanted to do, so somebody had to mediate where the air assets would be made available and where they would not? So, the fact that Australia, for example, wanted to carry out a particular operation didn't mean that it would happen if you needed air support because you then had to convince ISAF that they should give you their support?

SIR ANGUS: Well, basically the way the JPEL worked was that whoever had the highest priority would - there were a number of operations planned for a particular night. Whoever had the highest priority would get the enabling support. So, if you didn't have a high priority, you didn't necessarily get the helicopter support and you might have to consider other ways of doing the operation.

Now, we had our own helicopters assigned to the operation but we played by the same rules as everybody else and that's just the way it was.

SIR GEOFFREY: Sir Angus, I'm concerned to ask you about how one prepares troops who are engaged in the special operations about the very complex issues that you've outlined. They've got to understand about the Law of Armed Conflict and International Humanitarian Law and indeed the applicable ROE. How do you go about instructing them about that because they have to make some very fine and quite rapid judgments about them?

SIR ANGUS: Well, they're all very well prepared before they even leave Australia. The preparation process takes months and months. And there's a lot of further development of the skills that they already have. So, they have all the military skills. They understand, of course we basically use scenarios. They exercise continuously on those sorts of operations in Australia in very realistic scenarios.

In terms of the understanding of humanitarian law and so on, that all comes together in the Rules of Engagement and that's why the Rules of Engagement are very important because they basically take everything that's out there that has to be brought into consideration by the nation in terms of deploying our forces. And then it's all encapsulated in the Rules of Engagement and the limitations and constraints that might be there at a higher level.

So, when they go into theatre, they are very well prepared and that's why, you know, our Special Forces did night raids for a long time and there were relatively few

civilian casualties because these people were so well trained.

SIR GEOFFREY: Thank you. And there's just one other question I've got. I wonder if you could tell us a little bit about the preparation that goes into the planning and preparation process that precedes one of those operations. How is that organised and what are the inputs to it?

SIR ANGUS: In terms of what happens on the ground in Afghanistan, bear in mind I was sitting in Canberra for most of the time, so I never observed the planning process directly but I can assure you that it was very thorough and nothing was overlooked in terms of dealing with understanding the intelligence, making sure that we still are certain that the target is where the intelligence suggests it is. So, very important consideration, the intelligence.

And then the planning, the planning is very precise and goes into every conceivable aspect of the mission.

Obviously, we want to avoid civilian casualties. That's a major consideration. And how we will do it, the tactics, that's all worked out.

And the whole process of planning is designed to ensure a successful operation, while at the same time minimising the risk to the civilians and to our own forces. So, it has to be done in the most effective way possible and really, it comes back to the planning.

Now, the planning will not just be done an hour before the mission. The planning is done in a very deliberate way, sometimes over a period of days and, you know, when it's eventually - if there's time, there will be a rehearsal and then they go in and do the job.

SIR GEOFFREY: Thank you very much.

SIR TERENCE: Thank you very much, Sir Angus, for your time.

SIR ANGUS: Thank you.

SIR TERENCE: We will break now for lunch for an hour and start again at 1 o'clock.

Hearing adjourned from 12.01 p.m. until 1.00 p.m.

**PRESENTATION BY HON DR WAYNE MAPP -
Former New Zealand Defence Minister**

SIR TERENCE: We will now hear evidence from Dr Wayne Mapp. Mr Gray, you will lead him through?

MR GRAY: I will just ask him to read his statement, Sir, taking on board that all witnesses are witnesses of the Inquiry.

SIR TERENCE: Thank you. You are comfortable to sit up there?

HON DR MAPP: Yes, I will stand, in fact.

SIR TERENCE: We will swear you in because you are a witness of fact.

HON DR MAPP: I understand. (Witness sworn).

SIR TERENCE: Thank you.

HON DR MAPP: Sir Terence, Sir Geoffrey, my name is Wayne Daniel Mapp.

I served as a Member of Parliament for the North Shore from 1996 to 2011. I retired as an MP following the 2011 general election.

During my time in Parliament I was a member of Cabinet during the first term of the John Key National-led government. I served as Minister of Defence from 19 November 2008 to 30 November 2011.

Prior to becoming an MP, I was an Associate Professor of Commercial Law at the University of Auckland. My teaching included lectures in aspects of international law at the Law School.

I studied law as an undergraduate at the University of Auckland. I then received a LLM from the University of Toronto and a PhD in International Law from the University of Cambridge in 1988.

Prior to becoming an MP, I was a reservist officer in the New Zealand Army specialising in military intelligence.

In preparing to give this evidence to the First Module of the Inquiry, I have been guided by the Minutes issued by the Inquiry describing the scope of matters to be addressed. I have had, in the last two weeks, access to some classified documents. Some Cabinet papers have recently also been made publicly available. I have not seen files from my time as Minister of Defence which, presumably, are now held by Ministerial Services. If there are any matters of detail the Inquiry would wish me to address at a later time, I would be pleased to do this.

I am very pleased to appear today to assist the Inquiry in its important task. I have always believed that once the allegations about possible civilian casualties in Afghanistan had been made, those allegations should be investigated. See, for example, the New Zealand Herald article entitled "Hit & Run: Former Defence Minister Wayne Mapp calls for further SAS investigation: 'We owe it to ourselves to find out'" dated 30 March 2017.

I welcome the Inquiry because I believe it is the right forum to find out what happened in Afghanistan and during Operation Burnham.

The men and women of the New Zealand Defence Force (NZDF) have a well-deserved reputation for being a moral force who strive to uphold New Zealand values. I believe the Inquiry will serve their interests by providing an independent review of Operation Burnham.

From the establishment of ISAF, the NZDF had been assisting the Afghan people and their attempts

to rebuild their society after so many years of devastating conflict. By 2009, this role had evolved to focus on developing stable and accountable institutions including the Afghan Armed Forces and Police. It was in support of this role that New Zealand deployed our armed services to Afghanistan.

The September 11 attacks

New Zealand's military involvement in Afghanistan has its genesis in the al Qaeda attacks of September 11, 2001. I begin here because the decision to redeploy the SAS in 2009 needs to be understood in the context of that attack, the global response to the attack and New Zealand's response which, by 2009, had included two deployments of the SAS to Afghanistan. It is also important to keep in mind the legal basis for New Zealand's response.

The United Nations response

On 12 September 2001, the United Nations Security Council, unanimously passed Resolution 1368 in response to the attacks. The preamble of this resolution recognised the inherent right of states to individual and collective self-defence in accordance with the Charter of the United Nations. Clause 1 stated the attack was a threat to international peace and security, while Clause 3 called upon all states to work together to bring the perpetrators and supporters of the terrorist attacks to justice. It also said that all those who supported the terrorists or harboured them would be held accountable.

Clause 5 of the Resolution concluded by reaffirming that all necessary steps should be taken to combat all forms of terrorism.

Subsequently, the United Nations Security Council passed Resolution 1386 on 20 December 2001. This resolution provided the mandate for the International Security Assistance Force (ISAF) to deploy to Afghanistan to provide security and to assist in the reconstruction of the country under the new government in Afghanistan that replaced the Taliban.

The Resolution called on states to contribute personnel, equipment and resources to assist ISAF in its task.

The initial New Zealand response

On the morning of the attacks in New York and Washington DC there was a profound sense of shock in New Zealand. Just, as I might add, there has been most recently on the 15th of March, and my condolences go for the victims of that terrible terrorist attack.

That afternoon Parliament convened and Acting Prime Minister, Jim Anderton, spoke for the nation. All parliamentarians knew as a result of his statement that New Zealand would be deploying troops in support of an international coalition to respond to this act of terrorism which was without parallel.

The Acting Prime Minister said: "The Government is shocked and outraged at the callous killing of so many innocent civilians. New Zealanders share the despair and terrible loss that the whole of the civilised world feels at the loss, potentially, at the very least, of thousands of lives.

...

"As the nation gathered round radios and televisions and tried to make sense of this, I believe that a shared determination has grown: a determination felt by all decent people that the perpetrators of this violence must be brought swiftly to justice. The international community must work together to find everyone who made this happen, and see that they are punished. New Zealand will stand with all other democratic countries to do whatever is necessary to prevent and remove threats to peace, and the devastating scourge of terrorism." (12 September 2001) 595 NZPD 11615.

New Zealand Prime Minister Helen Clark wrote to United States President George W. Bush after the attacks stating that New Zealand would help in any way it could.

On 26 September 2001 New Zealand Foreign Minister Phil Goff met with United States Deputy Secretary of State Richard Armitage in Washington DC.

During that meeting Mr Goff offered New Zealand's "unequivocal support for the global campaign which will be necessary to secure the world against future terrorist attacks." (New Zealand Government Press Release "Goff Meets Armitage in Washington", 26 September 2001)

Mr Goff also advised Secretary Armitage that New Zealand's support would involve "diplomatic and political measures (including the immediate strengthening of legislation targeting terrorist activities) ongoing intelligence support and, if necessary, military support involving deployment of special forces."

The government proposed a parliamentary resolution on Wednesday October 3, 2001 to support the decision to deploy the SAS. The parliamentary resolution was supported by all political parties, with the exception of the Green Party.

During the debate on the motion Prime Minister Clark said:

"The offer by the Government to deploy the SAS is significant, and I assure the House that any offer to deploy New Zealand's crack troops--- which is what the SAS are -is not an offer that is made lightly. It is an offer that is made because the New Zealand Government and we believe the New Zealand people are not neutral about terrorism. They want to see something done, and they want to see their country be part of that effort.

...

"It is important that SAS troops know that they would go with the support of this Parliament and the people of New Zealand behind them." (3 October 2001)
595 NZPD 11996-11997

The SAS first arrived in Afghanistan on December 11, 2001. They were part of a multinational unit, Task Force K-Bar, which was commanded by the United States Special Forces Command. Task Force K-Bar had Special Forces from the United States, Australia, Canada, Denmark, Germany, Norway, and Turkey, as well as New Zealand.

The SAS were deployed in Afghanistan through to 2002. Prime Minister Clark indicated publicly that the SAS were involved in "direct action missions" against both al Qaeda and the Taliban.

The second deployment of the SAS to Afghanistan was for two rotations of 6 months in 2004 and 2005.

The SAS was deployed in the south of Afghanistan around Kandahar. Prime Minister Clark again indicated that the SAS would be involved in "direct action missions".

The Clark government also deployed a Defence Force Provincial Reconstruction Team (PRT) to Bamyan province in 2003. The PRT remained in Bamyan for 10 years covering 21 rotations.

The PRT performed significant work in Bamyan province and made huge gains. A substantial amount of civil reconstruction, not just the physical infrastructure, but also the institutions of government, particularly police and justice was carried out. The majority of the people of Bamyan province saw the benefits of the PRT and were well disposed toward the PRT.

I can say I saw that personally on a number of occasions.

All of this background informs the decision made by Cabinet in 2009. In 2009, the Cabinet was aware that the SAS had been successfully deployed to Afghanistan in the past on two occasions. It could therefore be done again if Cabinet judged it the right thing to do.

The Cabinet was also aware that the former Labour-led government had taken this step. There was therefore a strong element of bipartisanship in supporting the effort in Afghanistan and employing the SAS to do so. It was hugely important to us that the Clark Labour government has already taken this step.

I had also taken particular note of the statements made by Prime Minister Clark that the SAS were deployed to undertake "direct action" missions,

and that there would not be any publicity about the missions that the SAS carried out unless there were SAS casualties. The principal exception to that rule was when Corporal Willie Apiata was awarded the Victoria Cross of New Zealand.

National's defence policy

Following the election of 2008, there was a change of government from being Labour-led to being National-led. I was appointed Minister of Defence.

While in opposition, National had carefully considered its wider foreign policy and Defence strategy including how Afghanistan fitted into this wider strategy. National had endorsed the idea that the PRT was undertaking a modern form of peacekeeping and that this was a central role for the New Zealand military. Reinforcing New Zealand's peacekeeping role and contribution to peacekeeping throughout the world was important to me and to National.

National had also twice endorsed the deployment of the SAS to Afghanistan. In doing this we supported the view that New Zealand had a duty, along with other nations, to deal with the sources of international terrorism. New Zealanders spread around the world can be victims of terrorist attacks.

And, as we have tragically found, also in our own home. We felt that it was right to contribute to preventing those attacks where we were able. This was an important factor in the decision to redeploy.

The redeployment of the SAS would also show that New Zealand took its role in the world seriously. New Zealand would not just leave it to others to

take on the potentially difficult military roles within international coalitions.

Defence White Paper

As part of our campaign promises in 2008, National committed to undertake a comprehensive defence review. I led that process during 2009 and 2010. The review was published as a White Paper in November 2010. The White Paper was the first Defence White Paper the Government had published in 13 years. The White Paper is important because it reflected aspects of our thinking which we had developed in opposition and, more importantly, was being developed at the same time as the Government was re-considering the re-deployment of the SAS to Afghanistan.

In my view, the re-deployment to Afghanistan fits with the goals of the White Paper.

The White Paper anticipated the circumstances when use of military force could be appropriate. Although every situation is different, the White Paper suggested that the use of military force could occur when there was direct threat to New Zealand and/or Australia, or in the Pacific. Deployment could also occur if requested or mandated by the UN.

The White Paper further stated at paragraph 2.7 that: "It also seems likely that ad hoc coalitions prepared to use force will arise in the future, and that New Zealand might be asked to contribute. The possible scale and nature of such a contribution would depend on our assessment of the merits; the extent to which New Zealand's interests were directly involved; the international legality; the

conditions on the ground; and whether we would be acting in the company of like-minded states.”

The White Paper noted that it was in New Zealand’s strong national interest to support a “rules-based international order”. The White Paper recognised at 2.14 that there were “obligations associated with belonging to this rules-based international order, including being willing to play a constructive role in preventing or resolving conflict.”

This would mean that New Zealand would (at 2.15) support “collective security, participating in peacekeeping and stabilisation activities, and working alongside others in various multilateral and plurilateral settings to limit the risks of terrorism and proliferation.”

To meet these objectives, the White Paper set out the tasks that the NZDF should be able to perform. One of those roles was to contribute to international peace and security. There would, of course, always be limits on the size of that contribution given the fact that New Zealand is a small nation.

The White Paper noted at 4.26 that our contribution may extend to a combat role where that was appropriate. Equally important would be contributing to peacekeeping missions and building up defence linkages through assignment of defence attachés, formal military-to-military talks and participation in bilateral and multilateral exercises.

Overall, my view of the White Paper is that it reinforced that the NZDF must be capable of performing a wide range of missions to support New

Zealand's strategic interests. Those missions could, in the right circumstances, include combat roles but equally important were peacekeeping missions.

We wanted to retain an effective combat capability which would be necessary to participate in international coalitions (including peacekeeping tasks) and maintain international linkages. Those linkages were vital to New Zealand's long term interests and support of the rules-based international order.

Underlying the White Paper was that New Zealand needed to play an appropriate defence role for its size. We wanted to play a proportionate part in supporting the rules-based international order. We should not do more than our fair share; but we should not do less either.

Finally, the White Paper reflected and reinforced what is in my view a broad bipartisan consensus about what our role in the world should be. The NZDF should have the capability to take both combat roles and peacekeeping roles when necessary as part of international coalitions to support the rules-based international order. Sir Terence and Sir Geoffrey, I might add at this point, that philosophy has been endorsed in the White Papers of 2016 and the Defence Policy Statement of 2018.

Defence relationships

The White Paper recognised that international partnerships and maintaining those partnerships was vital to New Zealand's security. The Paper stated at paragraph 2.17:

"New Zealand's security is also enhanced by maintaining a variety of international linkages,

including bilateral relationships with like-minded states. Such relationships help to reinforce shared international norms and amplify New Zealand's reach and influence. They thus benefit New Zealand. But they also bring with them expectations, including being willing to play our part to advance shared security objectives."

As part of our international linkages, National was keen to have an improved relationship with the United States. An improved defence relationship would be an integral part of improving the overall relationship with the United States.

Part of my role as opposition spokesperson on defence was to keep regular contact with defence attaches in the relevant embassies. I also undertook overseas visits to build international relationships that would be central when in government. As a result of meeting United States Deputy Secretary of State Richard Armitage in 2004, I knew how highly the United States valued New Zealand's SAS contributions in Afghanistan in 2001 to 2002 and 2004 to 2005.

We saw an opportunity to improve the bilateral relationship with the election of Barack Obama in November 2008. This meant that from January 2009, there would be a new United States government dealing with a new National-led government in New Zealand.

During 2008, while in Opposition, Murray McCully and I considered the prospect of redeploying the SAS to Afghanistan should National form government after the 2008 election.

This consideration was informed by the clear campaign promises that Senator Obama was making

throughout his 2008 presidential election campaign. Mr Obama's view was that United States forces needed to be withdrawn from Iraq as quickly as possible while at the same time increased US and coalition forces should be deployed to Afghanistan. Mr Obama's view was that the war in Afghanistan had been neglected.

I kept myself abreast of statements by Senator Obama during the 2008 United States presidential election campaign. For example, on 15 July 2008, Senator Obama gave a major foreign policy speech called "A New Strategy for a New World". (<https://my.ofa.us/page/content/newstrategy>, accessed 1 April 2019)

In the speech Mr Obama set out his plan to end the war in Iraq quickly and re-focus efforts on the war in Afghanistan. He said that as president he would:

"make the fight against al Qaeda and the Taliban the top priority that it should be. This is a war that we have to win.

"I will send at least two additional combat brigades to Afghanistan, and use this commitment to seek greater contributions - with fewer restrictions - from NATO allies. I will focus on training Afghan security forces and supporting an Afghan judiciary, with more resources and incentives for American officers who perform these missions. Just as we succeeded in the Cold War by supporting allies who could sustain their own security, we must realize that the 21st century's frontlines are not only on the field of battle - they are found in the training exercise near Kabul, in the police station in Kandahar, and in the rule of law in Herat."

Given this policy position, it was apparent to me that the new National government would be requested to provide additional support in Afghanistan. Afghanistan would be a top priority for the new American administration.

While National had made no final decision about how it would respond when the request came, we certainly understood the importance of the request.

The request to redeploy

The decision by the New Zealand government to redeploy the SAS to Afghanistan in 2009 was part and parcel of the countries represented in ISAF agreeing to an overall increase of troops deployed to Afghanistan. This increase was a response to the military situation becoming more difficult in Afghanistan.

During 2009 and 2010, the United States increased its forces in Afghanistan by an additional 30,000 troops. The other ISAF nations were encouraged to follow suit, so that it could be said that the whole of the ISAF coalition would be seen to be acting in concert.

Within a few weeks of the election, the deployment of the SAS was being officially discussed, both within government and within Defence. The possibility of redeployment was widely discussed. For example, on 2 March 2009, Prime Minister Key commented that New Zealand would consider any request to increase our military commitment once it came and "read[ing] the tea leaves" it was likely that President Obama would ask NATO countries for an increased contribution. (New

Zealand Herald "NZ will consider boosting Afghan force if asked, says Key", 2 March 2009.)

On a visit to my office in early 2009, the United States Embassy Chief of Mission asked if the SAS could be deployed to Kabul to take over from the Norwegian Special Forces who were about to complete their mission.

This was not a formal request but the United States government wanted to be given an indication whether such a request would be welcome. I indicated that it was appropriate for such a request to be made.

In March 2009 the Commander of ISAF United States General David McKiernan officially requested the redeployment of the SAS in a communication to the New Zealand Chief of Defence Force, Lt General Mateparae. General McKiernan confirmed that under his request the SAS would take over from the Norwegian Special Forces in Kabul.

At around the same time, requests were made at a political level.

The first part of this process was a phone call between myself and the United States Secretary of Defense, Robert Gates. During that call, Secretary Gates expressed his admiration for the work that the SAS had previously undertaken in Afghanistan. He asked if New Zealand could redeploy the SAS to Afghanistan as part of the troop increase that was being undertaken by all ISAF nations.

I was also advised that President Obama would be telephoning Prime Minister Key in relation to the same matter. I advised the Prime Minister that he should expect a telephone call from President Obama in the next three days in relation to New Zealand

deploying the SAS to Afghanistan. I noted that there was a strong expectation that New Zealand would do so given the number of public statements that had already been made by the New Zealand government in that regard.

I understand that President Obama did phone Prime Minister Key, although I was not present during the call.

Taking over from Norway

ISAF wanted continuity with existing troop rotations, so that there would not be any gaps in respect of essential operations. We agreed with ISAF command that the SAS would replace the Norwegian Special Forces in Kabul who had been mentoring the Afghan Police Crisis Response Unit (CRU) for some time.

Replacing the Norwegians and providing security in Kabul seemed to us to be a worthwhile task and one the SAS would perform very effectively. We thought there was significant value in the SAS mentoring the CRU and upskilling the Afghan Police.

This role reflected the overall ISAF goal of increasing capability for the Afghans leading to the reduction (and ultimately elimination) of ISAF forces in Afghanistan. We also considered that the role in Kabul may be less risky than operations carried out in remote areas of Afghanistan as had been the case with respect to earlier deployments of the SAS.

In the weeks and months leading up to the Cabinet decision to approve the redeployment, the SAS and NZDF Headquarters worked to prepare for the mission on the basis it would be approved. This was

necessary because the timeframe to redeployment was short with the Norwegians ending their mission in August 2009.

The SAS sent liaison officers to United States Central Command to make the necessary logistical and planning arrangements including addressing the issue of how the SAS would be transported to Afghanistan.

The NZDF also sent a reconnaissance team to Afghanistan in mid-June 2009 to liaise with the Norwegians and to report on whether a re-deployment would be logistically possible. This team reported back that the redeployment was achievable within acceptable parameters.

The deployment of the SAS was to be for 18 months, to be done as three rotations of six months. After the completion of the 18 month deployment, it was expected that the Norwegian Special Forces would replace the New Zealand SAS.

The SAS were to be under operational command of ISAF Special Forces Command. The ISAF Special Forces Command was under the direct command of the Commander ISAF.

ISAF Special Forces Command would direct the SAS to carry out their specific operations within the Kabul area.

However, as the 3 July 2009 Cabinet Paper confirms, the New Zealand Chief of Defence Force "would retain full command of all NZDF personnel posted or attached as part of this deployment." This command would be exercised through the senior SAS officer on the ground.

Rules of Engagement (ROE) were developed so that the SAS could carry out its operations within the law.

The SAS would be primarily based in Kabul, however, it could be deployed elsewhere in Afghanistan if needed and approved by the Chief of Defence Force.

The mission for the SAS was to provide reconnaissance in Kabul and adjacent areas, and to locate insurgents and Improvised Explosive Device networks.

In addition, the SAS would mentor the CRU. This involved training the CRU and accompanying the CRU on their operations. Specialist support for these operations was provided by the SAS. This was a particularly important role as the aim was to increase the ability of the CRU over time so that the involvement of international forces could be wound down.

The SAS could take direct action against insurgent networks to support ISAF and the Afghanistan government.

The SAS also had the mission of supporting NZDF elements in Afghanistan including the PRT in Bamyan province. This role involved sharing of intelligence and providing tactical advice.

Finally, the SAS provided close protection parties for visiting senior officers and Ministers and hostage rescue.

ISAF

As I have noted, the SAS would be under the operational command of ISAF.

ISAF was constituted under UN Security Council Resolution 1386. This resolution provided the mandate to ISAF to operate. It also provided the legal justification for the New Zealand Government

to deploy forces to Afghanistan. In October each year the United Nations has renewed the mandate for ISAF through Security Council resolution.

In February 2009 I attended the NATO/ISAF Defence Ministers' conference in Cracow, Poland. Such meetings were held every six months and were important conferences at which each nation contributing to ISAF was able to make a statement setting out its views and have bilateral meetings with key partners. In particular these bilateral meetings were with NATO Secretary-General Anders Fogh Rasmussen, Defence Minister Wardak of Afghanistan and Commanders of ISAF who successively were Generals McKiernan, McChrystal, Petraeus and Allen.

Subsequently, I attended further meetings in Brussels (June 2009), Istanbul (February 2010), Brussels (June 2010), Bratislava (January 2011) and Brussels (June 2011).

At the Brussels meeting in June 2009, the prospect of the SAS replacing the Norwegian Special Forces in Kabul was discussed on the margins of the meeting. The ISAF mission in Afghanistan comprised two inter-related parts. One part was a combat role to provide security and stability for the Afghan government. The other was building co-operation between ISAF and local communities and the Afghan government. ISAF needed forces from countries around the world for both tasks. In New Zealand's case, the SAS had in the past been part of the combat role and the PRT was contributing to the rebuilding of Afghan society.

It was an essential objective of ISAF to increase the capability of Afghan forces so they

could ultimately take over the task of providing security in their country. Mentoring of Afghan Security Forces was a key part of this objective so that Afghan forces could take more and more responsibility which is why mentoring of the CRU was an essential part of the SAS mission.

At meetings of the defence ministers, when I spoke on behalf of New Zealand, I emphasised that the goal of the ISAF mission should be to deal with the risks of terrorism, to build the institutions of civil governance, and to enable the reconciliation of political factions within Afghanistan, including the moderate elements of the Taliban.

ISAF also needed to focus the role of defence forces to minimise the risk to the Afghan population. My concerns were shared by other ministers especially from European NATO countries and by Australia.

At the defence ministers' meetings, I was seated beside the Norwegian Minister of Defence. I particularly discussed Afghanistan issues with Minister Grete Faremo. Our discussions covered how our two countries, both being similar-sized, saw our role in NATO/ISAF. This was both in terms of peace-keeping and the deployment of Special Forces especially since the SAS were replacing the Norwegian Special Forces in Kabul. We also discussed the development of civil society in Afghanistan and our mutual concerns over the treatment of detainees.

I want to now turn to the formal decision-making process.

The decision-making process

The most important defence decisions, including deployments to Afghanistan, were made by the Cabinet. In the case of the redeployment of the SAS in 2009, the Cabinet was advised by a sub-committee of the Cabinet.

The decision to redeploy the SAS took place in tandem with the Cabinet considering New Zealand's overall commitment to Afghanistan.

New Zealand's commitment, including to the PRT, was to expire on 30 September 2009. The new government therefore had to decide if that commitment should be extended.

In February 2009 the Cabinet agreed to extend New Zealand's effort in Afghanistan, including the deployment of the PRT team, to 30 September 2010.

To inform the Cabinet in making this decision, I, along with Minister McCully, had prepared a paper. The paper recommended extension of the New Zealand commitment to September 2010 but also a review of our efforts. The paper noted that New Zealand had received frequent requests to contribute more including the deployment of Special Forces.

While this review was ongoing the Cabinet also had to consider redeployment of the SAS given the requests identified above.

Following President's Obama's phone call, the actual decision to redeploy the SAS took some time to be formally made. During this period of time the NZDF was preparing for the possibility of the SAS deployment. The Ministry of Defence was supporting NZDF's preparations. I was liaising

with Minister McCully, the Prime Minister and the NZDF.

The decision to deploy the SAS was informed by key officials through regular briefings, most of which were oral. These key officials were the Chief of the Defence Force, Lt General Mateparae, the Secretary of Defence, John McKinnon, the Secretary of Foreign Affairs and Trade, Simon Murdoch and the Chief Executive of the Department of Prime Minister and Cabinet, Maarten Weavers.

During discussion with these key officials, I do remember some limited discussion on intelligence capabilities. I recall that intelligence officers from SIS and from GCSB were to support the mission.

However, for the most part, intelligence for the SAS would be provided by ISAF HQ. The SAS would see and use the intelligence provided by ISAF and would contribute to the intelligence gathering network through ISAF.

A two-way process

I received a briefing from the NZDF on the possible options for redeployment of the SAS. Replacing the Norwegians as per General McKiernan's request, was seen as the best option for the reasons I have explained. This option was briefed to the Prime Minister and Minister McCully on 8 June 2009. I was also present at this briefing.

At that meeting we decided to draft a separate paper on the SAS redeployment for the Cabinet to consider.

I was responsible for overseeing the drafting of the paper which was prepared within the NZDF and Ministry of Defence as well as other relevant government agencies such as the Ministry of Foreign Affairs. We worked on the paper throughout June 2009.

Sir Geoffrey, you will understand such papers have several iterations.

The paper set out in detail the role of the SAS in the proposed redeployment and the preparatory steps that had been taken including assessment of the financial impact of the deployment.

On 6 July 2009 Cabinet authorised a special sub-committee of the Cabinet consisting of John Key, Bill English, Murray McCully and myself. This group of ministers was described as the Ministers with Power to Act.

This group of Ministers was authorised by Cabinet to take decisions on next steps on a further contribution to ISAF through redeployment of the SAS until the Cabinet met again. Any decisions we reached were subject to endorsement by the full Cabinet.

On 10 August 2009 Cabinet decided in principle to extend our commitment to Afghanistan until September 2011. Officials were also directed to develop a roadmap for exiting the PRT in the medium term. This was part of a strategic shift to emphasise development and governance assistance with the lead responsibility for security in Bamyán ultimately transferred to the Afghan National Police.

Also on 10 August 2009 Cabinet endorsed the redeployment of the SAS after the Prime Minister had set out the decision of the special committee in an oral briefing to the Cabinet.

The Cabinet Minute of Decision noted the redeployment of the SAS would be a positive and high profile contribution to ISAF and the deployment was for a fixed term with a clear exit strategy.

After Cabinet had approved the redeployment, I phoned Lt General Mateparae and informed him of the decision. The Minute of Decision would have been distributed to him as well as other relevant agencies.

From there General Mateparae and the Ministry of Defence commenced the process for implementing the decision Cabinet had made.

In making the decision to deploy, the possibility of SAS casualties and minimising casualties was a key concern. Obviously, the SAS would encounter dangerous situations. Despite their excellent training and skill, there was always the possibility of injury or death. I canvassed this directly with the SAS Commander who told me that this was accepted as part of their role.

There were also domestic political considerations to be considered. As I have stated already, the fact that the Clark government had previously deployed the SAS to Afghanistan was a very significant factor. If a Labour-led government could take this step, then so could a National-led government.

I also considered that the New Zealand public would be broadly supportive of this re-deployment. We were re-deploying the SAS to Afghanistan just as the previous Clark government had done. The redeployment would be seen as fulfilling New Zealand's role in helping combat international terrorism.

The fact that it was the new Obama administration that was requesting our support was an important factor for us. The new administration was popular in New Zealand and President Obama was personally popular coming after the presidency of George W. Bush. It was politically easier for the New Zealand Government to support a request from President Obama than President Bush given the goodwill associated with President Obama.

In my view the decision to re-deploy the SAS to Afghanistan was taken in the broad context of New Zealand's consistent and bipartisan commitment to collective security and support of the rules-based international order. The Clark Government had sent the SAS to Afghanistan in the past and there had now been a four year break between SAS deployments. It was appropriate that we play our part in contributing to ensure there was a secure environment in Afghanistan to permit that war-torn county to rebuild.

Debate in Parliament

The formal announcement was made by Prime Minister Key on 16 August 2009.

Following the announcement, the Green Party sought an urgent debate in Parliament on the deployment.

The Labour Party, under the leadership of Phil Goff, opposed the deployment of the SAS as did the Green Party.

The case for the Government was primarily put by Foreign Affairs Minister, Murray McCully. He stated that: "As a coalition partner from the beginning in Afghanistan, New Zealand must play its part." He noted: "The Government was responding to a formal request from the International Security Assistance Force. Requests to consider further military contributions were also received from coalition partners, including Australia, the UK and the US. We concluded that the SAS was best suited to the campaign being waged in Afghanistan today." (18 August 2009) 656 NZPD 5601-5602

In my contribution to the debate I said New Zealand wanted "... a stable Afghanistan, a country that will not threaten or, perhaps more particularly, allow its territory to be used by others who would threaten wider international peace. That is the specific interest that New Zealand has. New Zealand's current deployments in both the provincial reconstruction team and the deployment of the New Zealand SAS meet those needs. New Zealand's engagement in Afghanistan requires a contribution to both security and civil reconstruction. The current surge is intended to change the security situation." (18 August 2009) 656 NZPD 5610

I also emphasised that we were protecting ourselves by dealing with terrorism at its source in Afghanistan. I said: "We need to recall the principal reason why we first went to Afghanistan:

it was September 11, al- Qaeda had its base in Afghanistan, and the Taliban Government of Afghanistan was unwilling to eject al Qaeda and ensure it was brought to international justice. It was intolerable that a government should provide a safe haven to terrorists who had perpetrated the worst terrorist incident in history. It is worth recalling that New Zealanders have died in each of the al Qaeda directed and inspired incidents, including September 11, and those in London, Bali, and, most recently, Jakarta. We have a duty to our fellow New Zealanders to deal directly with the sources of terrorism." (18 August 2009) 656 NZPD 5609

Finally, I emphasised that there was widespread international support for the commitment to Afghanistan. I noted the support of the UN Security Council and the annual resolution passed by the Security Council authorising the ISAF mission. I also referred to President Obama and his renewed focus on Afghanistan. (18 August 2009) 656 NZPD 5609

The SAS were deployed operationally to Afghanistan in late August 2009.

I want to now turn to the issue of the oversight of SAS operations.

Oversight of SAS operations

The deployment of the armed forces in New Zealand or elsewhere is a matter for the royal prerogative as confirmed by section 5 of the Defence Act.

As Minister of Defence I had civilian oversight of the armed forces. Section 7 of the

Defence Act describes this as a power of control of the NZDF. This power is exercised through the Chief of Defence Force.

The Defence Act is couched in general terms to allow a degree of flexibility in how civilian oversight of the Defence Force is exercised. Oversight can be exercised in different ways depending on the needs of the specific deployment and the relationship between the Minister and the Chief of Defence Force.

In general terms, oversight occurs through regular briefings which are both oral and written from the Chief of Defence Force and from other senior officers.

As I have explained, the SAS were under the day to day operational command of ISAF Special Forces Command. The SAS conducted their operations according to instructions from ISAF and pursuant to the ROE which were authorised by the New Zealand government.

I did not approve or select missions for the SAS.

I did receive briefings on SAS operations once they had occurred. As the deployment continued, and at my request, these briefings became more extensive.

I considered it to be an essential part of my role to be aware of operations in sufficient detail so that I could be satisfied that I was properly fulfilling my oversight responsibility.

In part, I was also concerned that I needed to be more aware of what was happening in Afghanistan because SAS operations in Kabul were likely to

become more public than had traditionally been the case.

And I might interpose here. We probably all recall the photo of Corporal Willie Apiata as evidence of that.

I considered that both Members of Parliament and the media would be more likely to ask me about SAS operations because they were often operating in public in Kabul. This was not like previous SAS deployments which were in remote mountainous and desert areas.

I therefore needed to be informed of operations after they had occurred so I could be prepared for such questions.

I want to specifically state here.

It was a coincidence that both myself and the Chief of Defence Force were in Afghanistan when Operation Burnham was carried out. As a result of being in Afghanistan, I was briefed on the operation prior to it being undertaken. I understand the Inquiry will have a separate module on this matter.

Conclusion

New Zealand took the decision to redeploy the SAS to Afghanistan after careful thought and deliberation. The decision was made in response to international requests for assistance and as part of New Zealand's broader commitment to Afghanistan. This was in fulfilment of our responsibilities to collective security and to peace-keeping.

In Afghanistan these responsibilities were twofold. First, to build the capability of Afghan

civil society through the work of the PRT; second, to build the capability and effectiveness of the Afghan Police Special Forces through the deployment of the SAS who replaced the Norwegian Special Forces in this role.

SIR TERENCE: Thank you, Dr Mapp. We have a few questions. You are welcome to sit down if you would like to.

HON DR MAPP: I'm fine.

SIR TERENCE: It's quite striking in your description that the original deployment in 2001 was broadly supported within Parliament. I think you said only the Greens opposed it. In 2009, that consensus had disappeared, to some extent. You've said the Labour Party and the Greens were opposed to the deployment of the SAS.

I was just wondering, was the opposition to it simply to the SAS being deployed or was it to New Zealand being in Afghanistan at all by 2009?

HON DR MAPP: No, my recollection of the Parliamentary debate, and indeed the public statements elsewhere, was that Labour's position was we hadn't properly convinced them of the need for the deployment. That's how a number of their speakers in the debate put it. And so, therefore, they didn't feel they could support it.

The Green Party's position was more in keeping with their traditional view, that New Zealand should not be deploying combat troops in those kinds of operations.

Anyway, both parties, however, did support the PRT and they both specifically said that. I am fairly sure I acknowledged that aspect in my contribution, in particular noting that the Green Party had supported the PRT.

SIR TERENCE: Thank you.

SIR GEOFFREY: Dr Mapp, I've got quite a few questions, if you don't mind, and I'd like to start with the oversight of the SAS operations.

You've said some very useful things in that regard but the first thing to clear up is, you got advice from the Ministry of Defence as well as the NZDF, did you not?

HON DR MAPP: Correct. The Chief Executives of - well, the Chief of Defence Force and the Chief Executive of the Ministry of Defence on very important matters had a "device", we shall call it, called the Office of the Chief Executives which was essentially a notional thing. But whenever they had a very important point or issue to deal with, they would write under that heading and it was intended to signal to me to take particular note, these are deep issues, think about them very carefully. That's how I interpreted them.

SIR GEOFFREY: Thank you. Now, section 7 of the Defence Act, I think, provides ample authority for the Government of the day to deploy troops overseas, and I don't think there can be much doubt about that, can there?

HON DR MAPP: I wouldn't have thought so. Well, successive New Zealand governments have operated on that basis, including the current Government who have continued deployment in Iraq of the training team and other officers in fact.

SIR GEOFFREY: Yes, indeed. So, the next point that flows from that is, you've made the point that the civilian oversight of these defence activities, and necessarily that has to be flexible, but it's true, isn't it, that the New Zealand Defence Forces are really actually under the control of the

Government? If the Government wants to pull them out of a theatre, it can. If it wants to put them there, it can put them there. It sets out the Rules of Engagement what the restrictions on the use of force is and actually, it's the Government that's in control, not the armed forces, isn't it?

HON DR MAPP: That's correct. I had lots and lots of discussions with General Mateparae about these very questions. With my particular background both in international law and at least as a reservist officer, I sort of schooled myself up on some of these things.

So, there was lots of discussion. The challenge really always was this: yes, the Government deploys. Yes, it sets out the rules and parameters. Yes, it sets the ROE. And I took particular note of that and we will be dealing with that in another module. But you don't run the operation. You're not there to say, you know, do this operation this way. That's the military commander's job. They are trained for it. They've practised it. That's their job. The politicians' job is to set the broad parameters of the commission.

And then on top of that, New Zealand almost never deploys by itself. You have to have cognisance of how your partner is operating. And obviously, we try and operate with like-minded partners with similar values, not necessarily identical, similar.

What you can't do - and this became very evident at the NATO/ISAF Ministers meetings - is essentially have a complete set of different Rules of Engagement for yourself that was totally different to everyone else. The result of that would have been don't come because you're not usable.

So, you know, there is an art of negotiation that goes on in this in working out where is the right balance struck in here? Because, and this was the sorts of discussions that I used to have with the Norwegian Minister who was in fact from the left side of politics but we were both lawyers and both had knowledge in international law. So, we had, you know, really interesting discussions about this very issue. And both Norway and New Zealand, you know, we both regarded ourselves as moral nations. We are moral nations. We hold ourselves to a high standard. Our defence forces hold themselves to a high standard. So, we were careful to sort of get the right pitch and understanding about this and to influence as much as possible how ISAF dealt with this.

I mean, we heard this morning some of the language used by General Petraeus and General McChrystal, I met both of those gentlemen several times. Believe you me, they use very different language to what a New Zealand officer would use.

SIR GEOFFREY: The troops that we had in Afghanistan had to follow the Law of Armed Conflict, International Humanitarian Law, and there you were with a PhD in international law going to the theatre. Did you ever acquaint yourself with their degree of knowledge of these matters that they had to operationalise?

HON DR MAPP: Not in the way that you put it. What I did know, however, is that soldiers in operations actually have a little card - the ROE, it's actually a condensed version of it and I know this in part because when I was in intelligence I spent a lot of time working on these. And the skill was to actually try and condense the ROE into something

a soldier could understand, you know, look at as a rehearsing training, preparing, for a specific, yes, I can do this, this and this but not that, that and that. And it can't be too complicated. You can't give the person the Geneva Convention and say "acquaint yourself with all 150 articles and read Brownlee's Principles of International Law". That's not going to happen.

So, I sort of fundamentally took it on trust that our Defence Force had this under control. There were 35 legal officers. When I started in the military, there were two legal officers in the New Zealand Defence Force. There were 35 by Afghanistan. And every deployment, every sub-deployment had a legal officer attached and the legal officers in the New Zealand Defence Force are highly skilled in international law. They've done a lot of work in it and I knew that from my own direct experience.

SIR GEOFFREY: It was a relatively new thing, was it not, to deploy a fully qualified military legal officer with a detachment in theatre?

HON DR MAPP: Correct, yes. This actually changed the training that the legal officers had. At one stage it was kind of almost like a secondment but after a while, it was realised you had to ensure that all the legal officers had full military training as well, and that the legal specialty was essentially a core selection rather than a secondee as a civilian.

And so, that was necessary so that the operators, as the Special Forces would call themselves, would trust and respect that person.

SIR GEOFFREY: Yes. Can you say anything about the degree of training, generally speaking, that the

SAS receives? Not just on legal matters but their training methods.

HON DR MAPP: As you probably know as a former Prime Minister, because I imagine you've been to their facility?

SIR GEOFFREY: Yes.

HON DR MAPP: The training is extremely extensive. It is extremely hard to get into the SAS. Many try, most fail. And the training, the ongoing training, this is the point I'm really making, is intensive, continuous and at a much higher level than any other part of the Defence Force. I can't imagine there would be hardly a day would go by where they would not practice their war fighting skills in their various facilities.

Now, if anyone in the New Zealand Defence Force can make a distinction between who is a combatant and who is a civilian it's the SAS. They are the most highly trained, they are the most experienced and because of that, in a combat situation they have the coolest of heads to be able to make those judgments in the split second that those judgments have to be made.

SIR GEOFFREY: Thank you, very much.

I want to turn now to a different subject, and that goes towards the beginning of your submission today in relation to around paragraphs 12 and 13. We get on the 12th of September the United Nations resolution, and there are multiple United Nations resolutions in relation to Afghanistan over a long period of years. Now, had the United Nations resolutions not been made, we would not have deployed to Afghanistan, would we?

HON DR MAPP: I think it unlikely. And I think Prime Minister Clark provided an object lesson, including to myself I might add, at the importance of making

that judgment in respect of Iraq. She will always go down in New Zealand's history, political history, as making the correct and moral and proper decision and others of us had to learn from that.

SIR GEOFFREY: Yes because the United Nations resolution said that this was an act of international terrorism and the invoking of Article 51 to the United Nations Charter, this was a means of collective or individual self-defence, and they therefore invoked Chapter 7 of the United Nations Charter and therefore it was appropriate to deploy troops who could use lethal force in Afghanistan, wasn't it?

HON DR MAPP: Yes, that is certainly my understanding of how that particular resolution worked.

You may know that the initial deployment of the SAS occurred slightly before, about 10 days before the next set of resolutions. And there has been academic debate about whether, therefore, resolution, the 12th of September resolution was in fact sufficient to provide the necessary authority, that is resolution 1368. And I've read quite a lot of that material over the years and I think the analysis was wrong. It sort of rests in part on this: September 11 has happened, the people have been killed, the buildings destroyed, but al Qaeda is now just sitting in Afghanistan, they are not doing anything, they are just sitting there, gloating if you will. Therefore they are immune.

And I thought that is just kind of ridiculous. You can't possibly perpetrate such an event and then say because we're not going to do anything more, that's it. That would be a bit like saying if the Japanese had said well we bomb you on December the 7th, we're not bombing you on December the 8th so therefore we're in the clear.

You know, international law and indeed international practise simply doesn't work that way.

SIR GEOFFREY: Yes. There were repeated re-authorisations of the ability to invoke Chapter 7 in this theatre of operations which was, of course, a non-international armed conflict?

HON DR MAPP: But with international dimensions.

SIR GEOFFREY: Yes.

HON DR MAPP: One of the key points I always used to make in the NATO presentations, NATO/ISAF presentations, is why we were actually there. The only reason, at its fundamental essence, that the NATO/ISAF coalition of 51 nations was actually in Afghanistan was because of potential threat of international terrorism and the risk that al Qaeda or successors could re-establish themselves there and commit further acts of international terrorism.

In a sense, it's the same reasoning as applies for the UN resolutions, *vis-a-vis* ISIS.

SIR GEOFFREY: I mean, after all, the Security Council of the United Nations can virtually compel nations to take steps against terrorism. Under New Zealand law you're forced to follow them.

HON DR MAPP: Yes, it's questionable whether - parts of Resolution 1368 and other subsequent resolutions did have a compulsion element; other parts, there was a degree of choice. Whether or not to contribute to ISAF was a degree of choice.

It was interesting, you know, who was represented around the table. And it was interesting that our long-standing allies, Malaysia and Singapore, both contributed to the PRT and both - well, in the case of Singapore, in the New Zealand PRT and in the case of Malaysia, in the Australian PRT - there was sort of a

sense of like-minded nations working together because they shared common values, common heritage and needed to be able to rely on each other in situations that were seen of extreme urgency. And Afghanistan was certainly seen in that light.

SIR GEOFFREY: Yes. I now want to take you to paragraph 32 in which you note Prime Minister Clark's statement about the SAS deploying, undertaking direct action and there would be no publicity about the missions.

And indeed, I think that policy was properly followed by your own Government, to a large extent, wasn't it?

HON DR MAPP: In general terms, yes, it was followed there. I certainly took very particular notice of her formulation of words and how she - well, Prime Minister Clark was famously disciplined in regard to this. No-one ever got anything further from her than those words.

We were dealing with a more challenging situation because the SAS was in Kabul and a large number of the operations were literally on the television screen at night. I can remember three in particular. And then of course there is the famous photograph of Corporal Willie Apiata as well, and you can tell from that photo there's a man of action, you know, a truly elite soldier.

SIR GEOFFREY: Well, there has been some criticism that what the SAS does is never publicised in these operations. Can you perhaps consider what the counterfactual would be if it were publicised?

HON DR MAPP: I'll approach that question slightly differently. General Mateparae and I spent quite a lot of time talking about what the appropriate level of publicity about the SAS should be. And

you may recall there was a television programme done on the training of the SAS, you know the initial selection and so forth, some general aspects about the nature of the deployments. There was a book written on their history. And all of this was intended to bring more light onto the nature of the role of the SAS, given that that was clearly an emerging tendency or trend that it was necessary to be more open than had been the case in the past for a variety of reasons. To be open to the New Zealand public but also recognising the new situation.

SIR GEOFFREY: Thank you for that.

There's one matter that I do want to take up with you, and this reverts to the international legal material that you were good enough to advance to us.

Paragraph 42 talks about a rules-based international order in the White Paper which you said, I think correctly, that this was a bipartisan matter within New Zealand. And it brings obligations, which means that you have to belong, you've got to support the international order when you get the opportunity and you have to play a constructive role.

Now, to couple that with the UN resolution on this, it seems to me that New Zealand was moved quite strongly that it should do something, especially in the early stages, to help Afghanistan and that that - perhaps they didn't realise it was going to last as long as it has but, nevertheless, the motivation at the beginning was very strong, is it not?

HON DR MAPP: Yes, it was. I mean, I remember that first debate very well and it was an extremely powerful address by Jim Anderton, and you knew, I absolutely knew when I heard him that, okay,

New Zealand is going to Afghanistan as part of the coalition. There is no question about that.

And I think, frankly, everyone in Parliament, irrespective of what party they were in, understood that and, as you know, it was instrumental in causing the break-up of his very own party, the Alliance. But he was obviously personally and profoundly moved by it and you could tell that he instinctively understood where New Zealand needed to stand on this issue. We didn't need to be asked or told by others what we should do, we knew ourselves.

SIR GEOFFREY: Thank you very much.

SIR TERENCE: I just have one further small question.

At paragraph 102, you make the point that following President Obama's phone call, it took some time before the formal decision to redeploy the SAS was made and you say that the Defence Force were preparing for the possibility in the meantime.

Then you say, "The Ministry of Defence was supporting the Defence Force's preparations". I wondered if you are able just to summarise for us the nature of the Ministry of Defence's support for NZDF? What exactly would they have been doing?

HON DR MAPP: My recollection of it is, it was really sort of Defence diplomacy more than anything. Liaising with their partner ministries throughout the world. There was always, ISAF was obviously primarily a military force but always had its political dimension to it and political officers and so forth, ambassadors posted into Afghanistan etc. There was a UN Ambassador specifically and it was those sorts of relationships.

On the first point, you mentioned it took some time. Yes, it did, because we knew this was a big decision and we wanted to get it right and we knew that it - although we thought it would be broadly supported, we also knew there would be some controversy about it as well. And this is why I've referred in my evidence today to the importance of President Obama and the surge and the fact that all NATO/ISAF nations were to take part in it, and they all did, with I think maybe one exception.

But essentially, you know, to put it simply, there was something of a call to arms here and, as part of this broad coalition you were being measured whether or not you understood the obligations of collective security, you as a nation. And that's quite a hard test actually. You know, it's easy for me to say that glibly but the reality is you're putting people's lives on the line and I visited a number of - well, all of - the New Zealand families of those who were killed in operations and, you know, it's a powerful thing to see a young mother, knowing that she will never see her husband again, knowing those children will never see their father, and you know that was in large measure due to the decision you'd made, with colleagues but nevertheless a decision you'd made. And so, that's why there was a pause.

You know, yes, the request is made. Yes, we sort of knew we would have to do it but, yes, we just wanted to absorb the consequences of that, the emotional psychic consequences of what it would actually mean. That's why I specifically rang the - well, in fact, I went and saw him - the commander of the SAS, who I had known for some time anyway, and asked him this very direct question about, well, what does this actually mean to you? What is the risk? You are the one who's taking the risk. And he said, as you would expect, but in a heartfelt way,

that they knew this was a risk that they would take, that when they go on operations, they may not all return.

SIR TERENCE: Thank you very much, Dr Mapp. Right, we will take a 15 minute break and then we will have the Defence Force presentation on locations.

Hearing adjourned from 2.32 p.m. until 2.50 p.m.

**NZDF PRESENTATION BY COLONEL GRANT
MOTLEY - IDENTIFYING LOCATIONS RELEVANT TO EVENTS OF
21/22 AUGUST 2010**

SIR TERENCE: Mr Radich.

MR RADICH: Thank you very much, indeed, to both of you.

I am in the back row this time which is apparently appropriate for the Defence.

There are two speakers, I am just going to introduce their names and nothing more. Colonel Grant Motley will be giving the presentation this afternoon and Group Captain Carl Nixon is here beside him who will be operating the technology, all going well.

I will ask Colonel Grant Motley to introduce himself and give you an idea of his CV background experience first. Having done that, he will move to the paper he's going to present and that's being handed out.

SIR TERENCE: Thank you very much, Mr Radich.

COLONEL MOTLEY: Good afternoon, Sir Terence and Sir Geoffrey, Counsel Assisting, core participants and attendees. As introduced, I am Colonel Grant Motley. I am a Regular Force Officer of the New Zealand Army and I have 30 years' service.

My early career saw me progress through a number of appointments in the Royal New Zealand Armoured Corps. As a senior leader, I was the Commanding Officer of the First Battalion Royal New Zealand Infantry Regiment, a regiment that committed combat troops to Afghanistan. I have been the project manager for the review of joint entry-level training and professional literary education. Following this, I was the Commander of the New Zealand Defence College from 2014 until 2016 where I oversaw a

substantial change in the academic environment and overall conduct of Defence learning.

I have completed five operational tours. I have served in Afghanistan on two occasions, in 2006 and 2007, and again in 2011 and 2012.

On both these occasions, I served with Headquarters ISAF based in Kabul, Afghanistan.

I have a Masters Degree in Management in Defence Studies from the University of Canberra; postgraduate diplomas both in Arts and Business Administration from Massey University New Zealand.

I will say I was not involved in Operation Burnham and I have not previously served with the New Zealand Special Air Service either in New Zealand or on operations overseas. However, like many in the Defence Force, I have worked alongside the Special Air Service and the Special Operations Component Command in the past and currently.

I will also note that in 2017, the then-Chief of Defence Force, General Keating, asked me to lead a small team to investigate what reports or information were available from NATO and ISAF Headquarters in relation to Operation Burnham.

During discharge of these duties, I travelled overseas to meet with the then-investigating officer General Zadalis of the United States Air Force based in Germany at the time.

In my current role, I am responsible from a managerial perspective for the New Zealand Defence Force Geospatial Intelligence Unit and have some technical knowledge of mapping, location and the geographical data, much of which is being presented today.

My current appointment is that of Deputy Chief of Defence Intelligence Headquarters, New Zealand Defence Force.

By way of introduction, in the Inquiry Minute No 8, dated 11 February 2019, a presentation was requested of the NZDF on the location and events that occurred on 21/22 August 2010 in the Tirgiran Valley, Afghanistan. This operation was planned to arrest an insurgent known as Objective Burnham. This operation has now become known as Operation Burnham.

This presentation will explain the technology that NZDF used to establish locations, describe the location and relevant structures where the operation occurred, and provide a chronology of the activities that took place in Tirgiran.

The presentation will not provide or refer to information or material that is available only from classified sources. Unclassified information alone will be able to satisfactorily show and explain the location of Operation Burnham. Nevertheless, the NZDF invites the Inquiry members to refer to classified material provided to you previously, which provides for much greater detail.

This presentation will use terminology and refer to systems used in military operations. Navigation precision is important in military operations such as this so I will spend a few minutes providing an explanation of those systems and terminology. I will explain the use of the Global Positioning System, GPS, to pinpoint a location and latitude and longitude and the Military Grid Reference System to describe and identify that location. I will discuss the time that was used in the operation, and how metadata and the use of Intelligence, Surveillance, and Reconnaissance Remotely

Piloted Aircraft, abbreviated to ISR RPA, confirms the precise location of Operation Burnham.

First of all, the Global Positioning System or GPS is the primary navigational tool used to confirm locations and other geographic references in the air and on the ground. GPS is used by supporting aircraft to navigate and determine location relative to the aircraft.

Most GPS units display their position on the earth's surface in latitude and longitude. Latitude and longitude are abstract lines referenced to a defined mathematical model of the earth. It is common for geospatial data to be referenced to the World Geodetic System 1984, commonly known as WGS 84. The system is defined and maintained by the United States National Geospatial Intelligence Agency. GPS uses the WGS 84 as its reference co-ordinate system.

The Universal Transverse Mercator projection, abbreviated to UTM, transforms the three-dimensional earth into a two-dimensional system that allows cartographers and map users to measure distance, angles and areas accurately. The UTM system divides the earth into 60 zones, each being a six degree band of longitude. These longitudinal zones can then be broken into designated blocks moving north and south of the Equator.

New Zealand Defence Force personnel also use the Military Grid Reference System or MGRS to describe location. This is the geo-coordinate standard used by militaries for locating points on the Earth. MGRS is derived from the UTM projection.

Using the UTM zones, MGRS identifies blocks with a designated letter moving north and south of the Equator. These blocks are then divided into 100-kilometre by 100-kilometre square blocks that are given letter designations. Within each of these blocks, the MGRS

breaks down further into square grids at set distances, measured in metres. When operating in a specific MGRS block, coordinates of positions can be translated into simple alphanumeric values for the specific localised grid.

In addition to having a common understanding of the location, time is important in military operations. These operations have a large number of participating elements, some of which may be local to events and others not. The primary time standard for military use is the Co-ordinated Universal Time (abbreviated to UTC) time standard. Time zones are based on this standard. In this presentation, local Afghanistan time is used. Local time in Afghanistan is four and a half hours ahead of UTC.

Metadata is information that can be recorded by systems, such as Geographic Information Systems, and is either held for reference or can be displayed in real time on the system recording the data. It is common for digital cameras to capture metadata about an image which is usually the time and date an image was taken, the serial number of the camera, and the geo-position of the camera, if the camera is geo-enabled.

Cameras or video recording devices on military aircraft are able to capture and display additional metadata which may include aircraft location, the location of the imaged object, the date and time, the bearing and distance of the image from the device, and technical operating data.

Metadata was taken from sources not able to be used during this presentation, to confirm times and locations of structures and events related to Operation Burnham.

The NZDF has provided to the Inquiry classified video taken from cameras on board an ISR RPA, to confirm

the precise location of Operation Burnham. The video from the ISR RPA provided useful metadata including position, direction, altitude, time, bearing and distance, referenced to accurate on-board GPS. This was used to confirm actual locations and timing that occurred during Operation Burnham.

I will now address the questions of location and naming directed by the inquiry.

The Inquiry has requested that this presentation address five places that have been named in public or written submissions to the Inquiry. The Inquiry requested the NZDF provide a visual depiction of where each named location is on a map; the coordinates or grid reference for each named location; the location of any relevant structures; and a chronology of activity that occurred at that location.

To begin, I will first show a map of the NZDF presence in Afghanistan, before turning to the specific locations given by the Inquiry.

The New Zealand Provincial Reconstruction Team (the PRT), and the New Zealand Special Air Service (the SAS) worked with the police and security forces of Afghanistan, the international community, and our partners in the International Security Assistance Force (abbreviated to ISAF) to carry out United Nations Security Council objectives to restore peace and security to Afghanistan.

The SAS, together with the Crisis Response Unit (CRU), their Afghanistan partner force, were based in Kabul, the capital of Afghanistan.

The PRT were based in Bamyan, in Bamyan Province.

The eastern side of Bamyan province borders Baghlan province where the Tirgiran Valley is located.

We will just switch to some more detailed mapping.

The first place the Inquiry requested we depict is Tirgiran. The location shown as MGRS Reference 42S VD 23061 91545 on the Google Earth Image supplied by the Inquiry is the centre of the area where Operation Burnham took place.

MS MANNING: Do we have a hard copy of these? It would be very helpful if we can make notes as we go.

SIR TERENCE: There is a hard copy.

MS MANNING: I don't seem to have one. Can we have copies made? It looks like some people do, some people don't. (Copy of presentation handed to Ms Manning.)

COLONEL MOTLEY: Its latitude and longitude is 35.16389 degrees north, and 68.15517 degrees east. This is the location the NZDF know as Tirgiran.

Excluding the routes and flight paths of supporting aircraft and any refuelling locations en-route, all of the events of Operation Burnham conducted by the SAS occurred within 600 metres of this position.

The ground forces used a MGRS position to precisely locate the operation, and used GPS to accurately navigate to the location while airborne and on the ground. The NZDF has complete certainty as to the exact place where Operation Burnham occurred. During the information-gathering, planning and execution of the operation, NZDF and partner forces referred to the location primarily by its MGRS grid designation, rather than by a place name.

The NZDF is careful not to rely on local descriptors or names to pinpoint locations. This is because there is significant variation in the

names used by the Afghanistan Government and by the various tribes and ethnic groups. Additionally, adversaries often provide misleading information regarding local names, locations, or events said to have occurred in those locations. False or misleading location data can be used to hide insurgent activity or intentions from the police and security forces, or to obstruct security operations.

The Operation Burnham MGRS position refers to a certain point on the ground within an inhabited area. This area is referred to as Tirgiran (1) by at least four different official maps. Some of the maps describe the cluster of housing as 'Tirgiran' while other maps describe the same group of housing as Tirgiran (1) to the south and Tirgiran (2) some two kilometres to the north. On that basis, NZDF understood the area in which Operation Burnham was conducted to be called Tirgiran.

Tirgiran village is located along the banks of the Tirgiran River, in the Tirgiran Valley. Tirgiran is a region in southern Tala wa Barfak district, part of Baghlan Province in Northern Afghanistan. The Tirgiran River runs from south to north, with small settlements near the river, and the flatter land is used for farming. In the Tirgiran Valley, buildings are scattered along the flat land either side of the river. There are no clearly delineated boundaries to indicate where a housing area or community ever 'starts' and 'stops'.

The Tirgiran Valley area is mountainous and difficult to access. There are no roads or vehicle-capable access tracks. People travel along

formed pathways or tracks, mostly by walking or by using animals as transport.

The remoteness of, and difficult access to, this area has limited the ability of Afghan government or provincial officials being able to visit this area.

The quickest and most secure way for police or military security personnel to approach and access this area is by using air transport. The only way coalition forces could accurately navigate in this area was by using MGRS or geographic coordinates and GPS navigation equipment, which is recorded on many electronic systems. This is how the NZDF knows where Operation Burnham took place.

I will now highlight the structures relevant to events in Tirgiran. The slide images appear on a satellite photograph supplied by the Inquiry. NZDF markings give a visual depiction of where each named location is.

The first of the relevant structures in Tirgiran, and its geolocation is: the Helicopter Landing Zone, abbreviated to HLZ, for the landing of the assault teams.

MR RADICH: Sorry to interrupt, people are focussed on this screen, rather there's a laser being used on the left screen. It might be useful to divert your attention to the left-hand screen where laser activity is taking place.

COLONEL MOTLEY: The HLZ for the assault teams was centred on the pinpoint located at MGRS 42S VD 2274 9169. This HLZ location was a relatively flat field, clear of obstacles and had sufficient space for a helicopter to land and for personnel to disembark or embark with a degree of safety and security.

A building that we describe as the 'cache house' is where insurgent activity was observed by aircraft following the arrival of the NZDF SAS and Afghan CRU personnel in Tirgiran. This is located at MGRS 42S VD 2277 9156.

The cache house was composed of two nearly-connected rectangular-shaped buildings on the western edge of Tirgiran, approximately 100 metres south from the HLZ and 300 metres west of buildings Alpha 1 and Alpha 2.

The intended HLZ for the transport helicopter carrying the SAS's Ground Force Commander (GFC) and Joint Tactical Air Controller (the JTAC), and other specialist team members was found to be unsuitable on close approach, because of the uneven and rocky terrain. A site approximately 300 metres further to the south of the planned HLZ, in the vicinity of MGRS 42S VD 2280 9106, and to the west of Alpha 3, was ultimately used.

This HLZ area was uninhabited and had no structures and minimal vegetation.

Alpha 1 and Alpha 2 were located respectively at MGRS 42S VD 23031 91473 and MGRS 42S VD 23063 91484. Alpha 1 was the residence of Objective Burnham. An Afghan arrest warrant had been issued for Objective Burnham. Alpha 2 was about 20 metres to the east of Alpha 1. It was not known beforehand what the function of this building was.

The location where captured weapons and ammunition were disposed of by the Explosive Ordnance Disposal team at the end of the operation was approximately 25 metres to the west of A1.

The HLZ for the casualty evacuation, abbreviated to CASEVAC, was used to evacuate the injured SAS member and was in the close vicinity of MGRS 42S VD 2304 9139.

The CASEVAC HLZ was to the south of Alpha 1 in an area of open clear land; an area large enough for a helicopter to land to enable the wounded person to be uplifted and evacuated for medical care.

Alpha 3 was the residence of Objective Nova and was located approximately 300 metres to the south of Alpha 1 at MGRS 42S VD 23090 91154. An Afghan arrest warrant had been issued for Objective Nova.

Alpha 3 is above the river bank and consisted of a compound with a rectangular building and smaller wings at each end.

Having identified the locations of events I will now present chronologically the activities that occurred in Tirgiran.

On the night of 21/22 August 2010, the ground forces travelled to the Tirgiran Valley in transport helicopters. The first Chinook landed at the HLZ at 0030, or at half past midnight. The CRU and SAS ground forces disembarked and moved south-east towards A1.

The first Chinook landed and ground forces disembarked to make their way towards A1 and A2. At the same time two Apache helicopters, tasked with supporting the ground forces, observed a number of insurgents, military-aged males armed with weapons including rocket propelled grenades, exiting the 'cache house' and moving southward to the ridgeline above the village.

It was between approximately 0035 and 0048 hours that the ground forces moved towards building A1. They passed a tree line behind which a number of armed insurgents positively identified by the Apache helicopter crew were located. The SAS member closest to the tree line appeared to have sighted at least one of these individuals, but was not in a position through his night

vision goggles to positively identify the person as an insurgent.

At approximately 0045 hours, a command helicopter landed the GFC, the JTAC, and the observation team that included a sniper pair, on the ridgeline to the west of building A3.

A few minutes later, at approximately 0048 hours, the second Chinook landed at the original HLZ.

The second Chinook had the security teams which were to guard and secure the HLZ and the planned exit routes for the ground forces to use at the completion of the operation.

The GFC, having been informed by the Apache helicopter crew of the insurgents' activities, assessed that the insurgents were moving above the village to a position that would enable them to fire on the ground force from the high ground and would present a threat to the helicopters and to coalition forces already on the ground.

The GFC gave clearance to the Apache helicopter crews to engage the insurgents when they were certain that the Rules of Engagement were met, and that there was not likely to be civilian casualties or collateral damage.

At approximately 0054 hours, once the insurgents were positively identified as direct participants in hostilities and once checks were made to ensure that there were no civilians visible or friendly forces nearby, shots were fired by aircraft at the insurgents making their way up to the ridgeline. A number of insurgents were assessed to have been killed in this engagement.

A single insurgent was seen breaking away from the group that had been moving towards this ridgeline, and

appeared to be returning back to the building from which the armed insurgents had been seen leaving. One of the Apaches fired on this insurgent. During this engagement, several rounds fell short due to a gun sight malfunction and this resulted in the cache house being inadvertently hit by gunfire.

At approximately 0052 hours, the ground forces reached building A1, the residence of the first insurgent commander, known as Objective Burnham.

The Afghan interpreters conducted a 'call out' through a loud hailer, the purpose of which was to announce the ground force's presence and intentions to enter the building to any residents inside. There was no response.

The western wall of building A1 was breached by directional explosive charge so the ground force could enter the building safely.

The breached wall and part of the roof collapsed onto an SAS member. He was seriously injured and was medically evacuated at approximately 0237 hours.

A second entry point was made three minutes later, again by controlled explosive charge, and the residence was searched. The ground force did not find anyone present but did find a rocket propelled grenade launcher, rocket grenades, and other weapons and ammunition.

The nearby building A2 was then entered and searched and was found to be unoccupied.

At approximately 0115 hours, for approximately 10 minutes, the ISR RPA observed an insurgent moving along the ridgeline south of the village towards the observation position where the Ground Force Commander and his team were stationed.

The GFC was informed. He assessed that the insurgent presented a threat and authorised an SAS sniper

to engage the insurgent. The sniper fired two shots; the first hit and presumably killed the insurgent and the second shot hit a rock. The SAS searched for the insurgent who was shot but did not find him. The terrain was rocky and steep and time was limited to search.

While the ground forces were at A1 and A2, at 0123 hours the Apache helicopter crew observed and positively identified armed insurgents south of A3 and engaged them.

At approximately 0145 hours, the ground forces reached building A3.

Again, after the Afghan interpreter conducted a 'call out', to which again there was no response, the ground forces used explosive entry methods to breach building A3, the residence of Objective Nova.

The ground forces did not find anyone present. There was a still-burning cooking fire, and warm food and drinks that had been left behind. It appeared that the inhabitants had recently and hurriedly exited A3. A search of A3 located more weapons and munitions. These were taken to A1.

At approximately 0155 hours, while the ground forces were at A3, groups of insurgents were observed by support aircraft south of A3, but were not engaged.

At approximately 0255 hours, after the ground forces had left A3 and had returned to A1 to destroy the seized munitions, air support identified four insurgents leaving the group to the south and moving towards high ground. These insurgents were engaged by supporting aircraft.

At approximately 0319 hours the SAS EOD Technician placed the munitions taken from buildings A1 and A3 at a distance of approximately 25 metres from building A1 and conducted a controlled detonation to destroy the seized munitions.

The ground forces were extracted by the helicopters from the HLZ at approximately 0346 hours.

A1 and A3 were damaged by fire. The fire at A1 was most likely to have been caused by one of the detonated munitions and the fire at A3 was most likely caused by the unattended cooking fire. The ground forces did not know about the fires; it was not until after their departure that the ISR RPA detected 'hot spots' at A1 and A3.

The second and third named places by the Inquiry were Naik and Khak Khuday Dad.

The authors of *Hit & Run* allege that Operation Burnham took place in two villages in the Tirgiran Valley called Naik and Khak Khuday Dad.

The NZDF accepts that villagers living in Tirgiran, where the operation was conducted, may refer to their villages as Naik and Khak Khuday Dad.

The annotated satellite images provided by the authors at pages 64 to 67 of the book are wrong.

A geospatial analysis undertaken by the NZDF centres the villages depicted on pages 64 to 67 of *Hit & Run* approximately two kilometres north of where Operation Burnham took place. The NZDF has restated that it has never conducted operations at these locations.

On 19 March 2019, Mr Hager asked the Inquiry to disregard the satellite images at pages 64 to 67, the image on page 35, and the references in the book that are based on those images. These erroneous annotated images still appear on the authors' *Hit & Run* website.

Mr Hager accepts the NZDF's account of the location of the operation, including the structures, namely: the HLZ, buildings A1, A2 and A3, and the observation point used by the GFC.

Looking at the map, Mr Hager says that the villagers use the name Naik for the area to the east of the river (including A1, A2, and A3), and that the villagers use the name Khak Khuday Dad for the cluster of houses on the west of the river, adjacent to the HLZ.

The maps from *Hit & Run* illustrate not just a different location, but also a different story and geography for the events on 21/22 August. Based on the data that NZDF has reviewed, it is impossible that events were as Mr Hager and Mr Stephenson alleged on pages 64-67 of their book.

The fourth location of the Inquiry is Khakandy. The NZDF has no knowledge of a location referred to as Khakandy. The only reference to this place name is in media-released correspondence of McLeod and Associates to the Prime Minister on behalf of their Afghan clients, who state that Khakandy is a village about two kilometres north of where Operation Burnham took place. This location was wrongly referred to as Khak Khuday Dad in *Hit & Run*.

The NZDF never conducted operations at this location.

The last location of the Inquiry is Beidak. The NZDF has no knowledge of a location referred to as Beidak. The only reference to this place name is in media-released correspondence of McLeod and Associates to the Prime Minister on behalf of their Afghan clients, who state that Beidak is a village about two kilometres northwest of where Operation Burnham took place. This position is the same location as that wrongly stated as being Naik by the authors of *Hit & Run*.

The NZDF never conducted operations at this location.

In conclusion, Operation Burnham took place on 21/22 August 2010. Excluding the routes and the flight paths of supporting aircraft, all of the ground-based operations conducted by the SAS occurred within 600 metres of MGRS reference 42S VD 23061 91545. The engagements from the air happened within 1200 metres of this same location. This location was established and confirmed through GPS, map and satellite images, and still photographs with metadata showing the location and time.

Gentlemen, that concludes the New Zealand Defence Force presentation detailing Op Burnham locations and events.

SIR TERENCE: Thank you very much. We don't have any questions at the moment, thank you.

Mr Humphrey, I understand you have asked to submit some written questions now, is that right?

MR HUMPHREY: That's correct, Sir.

SIR TERENCE: Well, you're welcome to put in some written questions and we will ask for them to be answered and, as you know, we are going to have a process with our independent expert, and we hope with input from all core participants, to debate the location issue to the extent that it still remains an issue but you're welcome to put the questions in and we'll have a look at them and they can be addressed over the next week or so.

MR HUMPHREY: Thank you, Sir.

SIR TERENCE: Thank you.

CLOSING REMARKS

SIR TERENCE: That then brings us to the end of today's hearing. Could I thank all of those who have participated and all who have attended.

We will be having a second hearing in this sequence towards the end of May, so we hope to see some of you then. Thank you.

Hearing concluded at 3.30 p.m.