

17 August 2018

Further submission concerning Inquiry Minute No. 3 on classified information

Dear Sir Terence and Sir Geoffrey,

I hope it is alright for me to send you additional information I have found that may assist with the questions around classified information.

Since sending you my 10 August 2018 submission, I have spent some days retrieving documentation I used for my 2011 book *Other People's Wars*. This book included over a thousand endnotes referencing a wide variety of New Zealand and allied military documents relating to New Zealand's part in the Afghanistan war. Some of this documentation, while not specifically about Operation Burnham, is pertinent to the disputed classified information issues facing the Inquiry.

The first attached document is NZDF Operation Order 70-02 that relates to one of the first New Zealand deployments in Afghanistan: "Op Kiwi Stand – Contribution to the International Security Assistance Force Two (ISAF 2), Afghanistan" (**Attachment 1**). Operation Kiwi Speak included a posting of NZDF staff officers to the ISAF Headquarters in Kabul, under the operational control of the ISAF commander.

Page 8 of the operation order contains a "Reporting Schedule" for the deployed staff, which was instructions on when they were required to prepare routine or extraordinary reports of their activities and to whom they had to send these reports. For instance, a weekly SITREP (Situation Report) had to be prepared by the NZDF Senior National Officer (SNO) in Kabul and sent to the Joint Force NZ headquarters in Trentham every Sunday. During periods of heightened tensions, a SITREP had to be sent daily to the Joint Force NZ headquarters and also to the NZDF headquarters. It was the same with occurrence reports, post-deployment reports, end of tour reports, and reports any time weapons were used by or against NZDF personnel, all to be sent to New Zealand.

Looking at some examples of these SITREPs and other documents, it is very clear that they were written for their New Zealand military bosses, not for ISAF. I attach Op Kiwi Stand SITREPs 18 and 72, the first of which was quoted in *Other People's Wars* (**Attachments 2 and 3**). Most of the detail is not relevant, but it is clear that these documents are written for a New Zealand/NZDF audience. The SITREPs contain the normal interaction between deployed forces and their commanders at home and at times criticise aspects of ISAF, which they would not do if these were reports to ISAF. The point of these examples is that large quantities of routine and non-routine reporting such as this was prepared for and sent directly to the New Zealand headquarters. It will be the same for Operation Burnham. In comparison, I only saw a handful of documents (out of thousands) that appeared to be written primarily for ISAF.

The fourth document I attach, also quoted in *Other People's Wars*, is a post-tour report by the Senior National Officer in charge of the deployment to ISAF (**Attachment 4**). Once again it is very evidently written for New Zealand officers, for instance section 8 where there is quite strong criticism of the Turkish ISAF leadership and the German battle group. The thing to note here is that the report is written on ISAF letterhead, with the ISAF logo and "Headquarters of the International Security Assistance Force". It would be easy (but erroneous) to argue that it is an ISAF document

requiring ISAF permission before it could be provided to other participants in the Inquiry.

According to the NZDF memorandum on classified information, the documents produced by these staff and attached here would be “documents and communications that the NZDF prepared during the ISAF operation and as part of that operation's activities”, and therefore “subject to the control of NATO”. But these are clearly New Zealand documents. The real dividing line is that ISAF controlled documents are ones a) produced by ISAF itself or b) reports written by NZDF or other troop-contributing nations' staff “using the ISAF classification system and for the ISAF chain of command” (as the NATO press officer quoted in my main submission wrote).

Note that Attachment 4, the Post Tour Report, does not use the ISAF classification system and that it is not addressed to the ISAF chain of command. Instead it is classified “Restricted AUSCANNZUKUS”, meaning it was releasable only to the Five Eyes nations, at a time that ISAF was commanded by Turkey, a non-Five Eyes nation. It was addressed to “HQ JFNZ”, the NZDF Joint Forces headquarters in New Zealand. Its file category “NZFOR ISAF” was a New Zealand file category.

In other words, despite being written by personnel under control of the ISAF commanders at the ISAF headquarters, on ISAF letterhead, it is a New Zealand document under the control of the New Zealand government.

The same pattern is seen with NZDF personnel working as part of Operation Enduring Freedom, which was the operation name for US military combat operations in Afghanistan (occurring in parallel to ISAF operations). I attach the original New Zealand Provincial Reconstruction Team operation instruction, a deployment conducted initially under Operation Enduring Freedom (**Attachment 5**), also quoted in *Other People's Wars*. Page 12 has identical obligations for reporting back to New Zealand to those seen above.

Another Operation Enduring Freedom deployment to Afghanistan called Operation Kiwi Cracker, New Zealand military intelligence staff posted to the US military headquarters at Bagram base, has the same regular reporting to New Zealand. I attach a different type of routine reporting, a QUICKREP, which reports on the arrival of an SAS contingent, Operation Concord (**Attachment 6**). Once again the report, by a New Zealand officer working under the US commanders at Bagram, is addressed to to the Joint Forces headquarters in Trentham.

Thus when NZDF claims that 80% of the Operation Burnham documents are under NATO (ISAF) and US military control, I strongly suspect they are including all the New Zealand military communications and reports about personnel, intelligence, operations, logistics and so on, which are clearly distinguishable from formal reporting and communications to and from the ISAF and US military hierarchies. For each of these New Zealand reports and other documents there are of course also classification issues relating to national security (this was the subject of my main submission on classified information, with the wide array of declassified documents seen in the German and British inquiries). But this letter is about the supposed problems of foreign-sourced information, problems which I wish to ensure are not being exaggerated.

Yours sincerely,

Nicky Hager