

# WILL A ROLE IN AFGHAN PEACE NEGOTIATIONS TRUMP INDEFINITE DETENTION?

The Telegraph reports that a High Peace Council convened by Hamid Karzai may request that some Gitmo detainees be freed so they can participate in peace talks. (h/t Carol Rosenberg)

Taliban prisoners would be freed from Guantánamo Bay to potentially join peace negotiations under a proposal from the Afghan council appointed to find a settlement to the insurgency.

[snip]

The 68-strong High Peace Council was inaugurated by Hamid Karzai last month to pursue a twin-track strategy of reaching out to Taliban leaders while coaxing foot soldiers from the fight.

Mullah Rahmani, an education minister in the Taliban regime, heads a group of former Taliban on the council and chairs a subcommittee on political prisoners.

[snip]Mullah Rahmani said he wanted influential prisoners freed from American and Pakistani custody as a confidence-building gesture and potentially to join talks.

[snip]

He said: “We could use these people in negotiation. They have good contacts and are trusted by the Taliban.” Khairullah Khairkhwa, Taliban governor of Herat province until 2001, and Mullah Mohammad Fazl, deputy chief of staff in the Taliban army, were among those who should be freed from Guantánamo he said.

Khairkhwa is “a hardliner in terms of Taliban philosophy”, with “close ties to Osama bin Laden” according to his Guantánamo case file. Fazl was second-in-command of the Taliban’s army at the time of the United States’ invasion.

As these peace talks have developed, I’ve been suspecting something like this would happen. In particular, I’m curious whether this request would need to – and would – trump the US government’s decision that Khairkhwa and Fazl needed to be indefinitely detained.

I asked Rosenberg whether she knew if Khairkhwa was among the 40-some detainees slotted for indefinite detention, and she responded that she did not recall his name submitted for trial.

I asked that question because the Gitmo Task Force Report (pdf) had included top Taliban leaders among those who had been picked for indefinite detention.

In contrast to the majority of detainees held at Guantanamo, many of the detainees approved for detention held a leadership or other specialized role within al-Qaida, the Taliban, or associated forces.

[snip]

Others were Taliban military commanders or senior officials, or played significant roles in insurgent groups in Afghanistan allied with the Taliban, such as Hezb-e-Islami Gulbuddin.

Khairkhwa and Fazl would certainly qualify as “military commanders or senior officials.”

Now, if Khairkhwa and Fazl are senior enough members of the Taliban and legitimate and necessary peace partners, doesn’t that suggest they were not illegal combatants, but rather legitimate political leaders? And doesn’t that mean they should have been treated as POWs from

the start?