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3.9 IRAQ - SPECIAL FORCES INVOLVEMENT IN DETENTION OF SUSPECTS IN IRAQ APRIL 2003  
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the alterations on  
the first 4 pages

### 3.18

**BACKGROUND:**

The *Sydney Morning Herald* on Thursday 10 June 04, contained an article titled 'Secret Review of interrogation practice'. In the article it was claimed that:

*"Defence lawyers say Major O'Kane is expected to be sent to the Pentagon as early as next month. If the posting goes ahead, he could be called upon before inquiries arising from the abuse scandal. The Federal Government has refused to let him testify here."*

The identities of the alleged Defence lawyers are not known and this attribution cannot be confirmed.

Major O'Kane was selected for a three month secondment to the US Centre for Law and Military Operations (CLAMO), Charlottesville Virginia. This selection had occurred prior to questions being raised about Australian involvement about the Iraq detainees issue.

It was originally intended that Major O'Kane be attached to the US Centre for Law and Military Operations for a period of three months from June 04 to September 04, in the position of Director of Coalition Operations. Major O'Kane would have been the second ADF legal officer to undertake this secondment. To date the secondment has been most successful, with the first ADF legal officer seconded being required to assist in the writing on legal lessons learnt and doctrine in respect of coalition issues. The attachment provides a level of reciprocity to the US Army for its two year secondment of a US Army Major to the Military Law Centre at Randwick Barracks, Sydney.

The rationale for the decision to require Major O'Kane to remain in Australia, is for him to be available to assist the Department of Defence to respond to the questions raised concerning the Iraq detainee issue. Major O'Kane has been personally advised of the reasons for not sending him on the secondment and has accepted the decision.

**AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:**

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- \* 3.29 REQUESTS FOR MAJ O'KANE TO APPEAR BEFORE US ENQUIRIES
- \* 3.30 AUSTRALIAN GOVERNMENT INTERPRETATION OF ARTICLE 5 OF FOURTH GENEVA CONVENTION
- \* 3.31 NEW YORK TIMES REPORT OF EARLY INTERNAL US ARMY REPORTS OF PRISONER ABUSE

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*Previously released* 3.9

**IRAQ - SPECIAL FORCES INVOLVEMENT IN DETENTION OF SUSPECTS IN IRAQ APRIL 2003**

**POSSIBLE QUESTION:** Were Australian Special Forces involved in the capture or detention of any Iraqi soldiers during the Iraq War in 2003?

**TALKING POINTS:**

- Australian Special Forces did not capture any Iraqi soldiers, or Fedayeen, during the War in Iraq. Australian Special Forces employed a policy of avoiding contact with the enemy; however, occasionally they were requested to assist US Special Forces in detention tasks.
- On the 11 April 2003, a number of Australians operating in the western desert helped detain 59 Fedayeen, four non-Iraqis and three Baath Party officials for 10 hours. The 66 detainees were subsequently transported to a US detention centre by helicopter.
- Two of the detainees had minor ailments, a chest cold and a sore foot, which a Special Forces medic attended to. All the personal effects, including passports, found on the detainees were listed, accounted for and transported with them on the helicopters. This included significant quantities of US currency and jewellery.
- While held, all detainees were given blankets and water and fed rice and lamb sourced from local sheikhs. In addition, during nightfall when the temperature dropped the detainees were placed inside vehicles to provide them with shelter.
- A Special Forces Arabic linguist questioned the detainees in relation to other threat forces in the area but no interrogation was conducted. All detainees were handed over at the helicopters in good health.

**ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:**

*Sect 41*

10 May 2004

IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** Did Australia hand over captives to its Coalition partners and if so, under what conditions?

**TALKING POINTS:**

- *Although Australian forces captured no prisoners in the combat phase of the war Iraq, Australian forces did assist in the capture of around 120 Iraqis.*
- *In each case the United States was the detaining authority.*
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- *Evidence on these issues has already been provided by Defence in the Senate Estimates Committee and by myself in the Senate on 16 June 2004. The Committee is again sitting today and further answers will be provided.*

### 3.10

#### BACKGROUND

*In your statement yesterday to the Senate you informed the Parliament that Australian forces assisted in the capture of 120 Iraqi prisoners although as the US was the detaining authority in each case, the ADF was not the detaining power under the Geneva Convention.*

During the DFAT Senate Estimates Hearing on 3 June, you discussed 5 cases where Australian Defence Force personnel assisted United States forces to detain and transfer captured forces in Iraq, however in none of these cases was Australia the detaining power. You subsequently stated that the current defence task force would be reviewing information known on these, and any other potential matters of this nature, and that this information would be included within your statement to the Senate during its next sitting period.

In the Senate on 12 May, you were asked by Senator Bartlett about an agreement signed by Brigadier McNarn to ensure that prisoners captured by our forces are treated in accordance with the Geneva convention. You responded that an agreement had been signed relating to the transfer of detained persons but that the agreement did not apply to instances where Australians were associated with the capture of individuals.

The Age, on 13 May, carried an article attributing to you comments that during the conflict in Iraq, Australian deployments in Iraq included a US soldier who would act as a detaining official during the capture of prisoners. The Age article also claimed that you stated that for the first three months of the conflict, Australia was an occupying power, with responsibilities for the protection of the Iraqi people.

On 12 May, the Courier Mail and The Australian reported comments by you that Australia was not a Detaining Power of Iraqi prisoners, and that there was no obligation to follow up on treatment to prisoners 'captured by Australian forces in Iraq'.

The Australian on 11 May 2004 claimed that Australia had a legal obligation to find out if any of the Iraqis taken prisoner by Australian forces had been mistreated. The author John Kerin claimed to have obtained a copy of an agreement signed by then-BRIG Maurie McNarn, the commander of Australia forces in the Middle East, which said that Australia had obligations to any prisoners captured by Australian forces.

In response to questioning on the ABC's 7:30 Report on 4 May as to whether Australian forces had been involved in any interrogation or incarceration of Iraqis, you stated that Australian forces hadn't ever been responsible for holding prisoners. You further commented that in the event that Australian personnel were responsible for holding prisoners that you would be very confident that they would behave appropriately

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17 June 2004

**DECISION NOT TO ALLOW MAJOR GEORGE O'KANE TO  
PROCEED ON AN OVERSEAS ATTACHMENT**

**POSSIBLE QUESTION:** Why has Defence decided not to allow Major George O'Kane to proceed on an overseas exchange to the Pentagon?

**TALKING POINTS:**

- Contrary to recent press reports, Major George O'Kane has not been selected for an exchange posting to Pentagon in the United States.
- Several weeks ago, Major O'Kane was selected as the second Australian Defence Force officer to undertake a three month temporary duty attachment to the United States Army Centre for Law and Military Operations located at the US Army Judge Advocate General's School at Charlottesville Virginia in the United States.
- As a result of recent events it has been decided by Defence that Major O'Kane will not proceed on the attachment he was due to commence in a few weeks time.
- The rationale for this decision is that Major O'Kane is required to remain in Australia to assist the Department of Defence to respond to the questions raised concerning the Iraq detainees issue.