

IRAQ: ALLEGATIONS OF ABUSE OF IRAQI DETAINEES

POSSIBLE QUESTION: When was the Government aware of abuses of Iraqi detainees in US-run detention facilities?

TALKING POINTS

- *As I stated yesterday, I can reaffirm to Parliament and the people of Australia that the ADF was not involved in guarding prisoners at the Abu Ghraib prison or any Iraqi prison, (is this correct in light of information in SOD brief this week concerning the role of TCD personnel) did not interrogate (I presume we are distinguishing interrogation from interview) prisoners and was in no way involved in perpetuating the acts of abuse against Iraqi prisoners we have seen in the horrific photographs.*
- *Australian Defence Force personnel have at all times acted honourably and consistently with their international obligations, including under the Geneva Conventions. The Australian people can take pride in the efforts of our personnel, including our ADF legal personnel, in helping to restore and rehabilitate Iraq.*
- *Australian Defence lawyers working in the US-led coalition force headquarters and in the Coalition Provisional Authority were aware of ICRCs concerns regarding the mistreatment of Iraqi detainees, and the conditions in US-run detention facilities.*
 - *These officers were involved in facilitating ICRC investigations of conditions at US-run detention facilities and supporting efforts to resolve these concerns.*
 - *ADF legal officers actively assisted ICRCs investigation of US-run detention facilities.*
- *The ICRC's investigation of detention facilities in October 2003 did not find any examples of abuse of the nature revealed through*

those abhorrent photographs released in late April. (true but this raises the definitional issue again – ie what is abuse of what is serious mistreatment)

- The ICRC delivered its working papers and reports to the US and the UK, those governments it deemed responsible for detention operations in Iraq. Australia is not considered a detaining power and so has not been formally provided with any ICRC reports on Iraqi detention facilities.
- To the best of our knowledge, the ICRC's October investigations occurred before these abuses occurred.
 - To suggest that Australia had knowledge of the extent of the abuses at Abu Ghraib through the October working papers is a nonsense.
- In late January 2004, some ADF legal officers became aware that the US was undertaking an investigation into reports of detainee mistreatment.
 - And also in January, ADF officers also assisted the ICRC to undertake another review of US-run detention facilities.

Therefore these officers were reassured (how were they reassured. When the visits in Hjan 04 occurred there weren't any allegations of abuse) that allegations of abuse would be dealt with by the US as the detaining powers and the ICRC. (how does this conclusion that they were reassured follow?)

MINDER

IF ASKED: About the Prime Minister being misled.

- The Department received a number of papers from Major O'Kane on 11 May, including copies of October and November working papers from the ICRC. These documents were used in the preparation of a draft response on behalf of BRIGGEN Janis Karpinski.

○ However, the significance of these working papers did not become fully clear to the Department until Sunday 30 May. ~~(SEC/CDF/DEPSEC should confirm)~~

● The statement made by the Secretary of the Department of Defence and the Chief of the Defence Force on 28 May was based on the best knowledge held by the Department at that time.

● I regret that this led to the provision of inaccurate advice to myself and, through me, to the Prime Minister. ~~(is this accurate given the totality of briefings provided previously to MINDEF)~~

IF ASKED: About the 'stream of regular reports to Canberra' detailed in the documents tabled in Parliament on 16 June.

● The table summarising reporting on detainee concerns which I provided yesterday contained extracted references which were components of larger reports.

○ ADF lawyers in Iraq were responsible for a broad range of tasks, including supporting the development of new Iraqi legal and political systems, support to prevent smuggling of Iraqi oil and establishment of an Iraqi Special Tribunal to try suspected criminals from the former regime, including Saddam Hussein.

○ Involvement with detainee issues was only one portion of these officers' work.

○ Although these officers reported some concerns in situation reports, none reported seeing any incidents which they believed represented contravention of the Geneva Conventions.

IF ASKED: About Defence personnel who visited Abu Ghraib prison?

- *A number of ADF personnel visited Abu Ghraib prison as part of their duties after it began operating as a US-run detention facility in July 2003.*
- *These included Major O'Kane, and ADF officers working as lawyers in the Coalition Provisional Authority, as well as ADF personnel based at the Australian National Headquarters in Baghdad.*
- *And as I have said before, while these officers reported some concerns in situation reports, none reported seeing any incidents which they believed represented contravention of the Geneva Conventions. (querie whether this is accurate in light of Muggelton sitreps eg 13)*

IF ASKED: About Major O'Kane's involvement in prisoner abuse allegations.

- *While Major O'Kane's situation reports referred to work he was undertaking in response to ICRC communications, none contained reference to abuse, or that he held concerns regarding abuse of Iraqi detainees.*
 - *Major O'Kane was satisfied at the time that the ICRC's concerns were being addressed through the US chain of command, which was appropriate, as the US military was responsible for detention centres in Iraq.*

IF ASKED: Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation of Iraqis?

- *No ADF personnel were involved in the interrogation of Iraqi prisoners.*

• *The Australian Iraq Survey Group contingent commander has confirmed that no Australian members of the ISG have been involved in the conduct of interrogations of detainees in Iraq.*

○ *Australian members of the ISG are only present at debriefings or meetings with sources who are offering to cooperate with the ISG. (there are two instances at least of ISG civilian members conducting interviews – see SOD brief)*

○ *Australian ISG members do, however, contribute to the development of questions put to detainees as part of the search for Iraqi WMD.*

BACKGROUND

You made a statement to the Senate yesterday outlining the nature of the Government's knowledge of detainee abuse issues. The statement was responded to by Senator Faulkner, Senator Bartlett, Senator Brown, among others.

Media Headlines

Sydney Morning Herald, 17 June 2004, 'Abuse alerts poured in from Iraq', 'Hill stands by department's advice' 'Senator forced to defend the force'

The Australian, 17 June 2004, 'Minister 'kept in dark' on abuses' 'Only truth is a dysfunctional Defence'

Adelaide Advertiser, 17 June 2004, 'Half-baked' Hill short on answers'

Age, 17 June 2004, 'Iraq abuse known of last June' 'Military officers knew of Iraq abuse claims in June' 'Abused prisoners? Keep bluffing till the issue goes away.'

AUTHORISED BY:

CONTACT OFFICER:

Sect 71

17 June 2004

IRAQ: ALLEGATIONS OF ABUSE OF IRAQI DETAINEES

POSSIBLE QUESTION: When was the Government aware of abuses of Iraqi detainees in US-run detention facilities?

TALKING POINTS

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Australian Defence Force personnel have at all times acted honourably and consistently with their international obligations, including under the Geneva Conventions. The Australian people can take pride in the efforts of our personnel, including our ADF legal personnel, in helping to restore and rehabilitate Iraq.

~~Australian Defence lawyers working in the US-led coalition force headquarters and in the Coalition Provisional Authority were aware of ICRC's concerns regarding the mistreatment of Iraqi detainees, and the conditions in US-run detention facilities.~~

(X)

ADFC ~~legal officers~~ ^{legal officers in 1502} ~~were involved in facilitating ICRC investigations of conditions at US-run detention facilities and supporting efforts to resolve these concerns.~~

~~ADFC legal officers actively assisted ICRC's ^{the} investigation of US-run detention facilities.~~

(P)

The ICRC's investigation of detention facilities in October 2003 did not find any examples of abuse of the nature revealed through those abhorrent photographs released in late April.

The ICRC report did, however, ^{only} ~~reveal~~ ^{raise} some concerns

Moreover,

- *The ICRC delivered its working papers and reports to the US and the UK, those governments it deemed responsible for detention operations in Iraq. Australia is not considered a detaining power and so has not been formally provided with any ICRC reports on Iraqi detention facilities.*
- *To the best of our knowledge, the ICRC's October investigations occurred before ~~these~~ abuses occurred.*
- *To suggest that Australia had knowledge of the extent of the abuses at Abu Ghraib through the October working papers is a nonsense.*
- *In late January 2004, some ADF legal officers became aware that the US was undertaking an investigation into reports of detainee mistreatment.*
- *And also in January, ADF officers also assisted the ICRC to undertake ^{a further} another review of US-run detention facilities. Therefore these officers were reassured that allegations of abuse would be dealt with by the US as the detaining powers and the ICRC.*

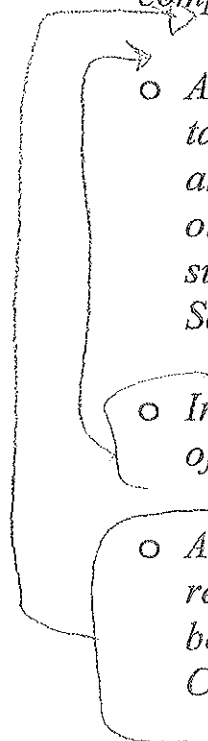
IF ASKED: About the Prime Minister being misled.

- *The Department received a number of papers from Major O'Kane on 11 May, including copies of October and November working papers from the ICRC. These documents were used in the preparation of a draft response on behalf of BRIGGEN Janis Karpinski.*
- *However, the significance of these working papers did not become fully clear to the Department until Sunday 30 May.*
- *The statement made by the Secretary of the Department of Defence and the Chief of the Defence Force on 28 May was based on the best knowledge held by the Department at that time.*

- *I regret that this led to the provision of inaccurate advice to myself and, through me, to the Prime Minister.*

IF ASKED: About the 'stream of regular reports to Canberra' detailed in the documents tabled in Parliament on 16 June.

- *The table summarising reporting on detainee concerns which I provided yesterday contained extracted references which were components of larger reports.*



- *ADF lawyers in Iraq were responsible for a broad range of tasks, including supporting the development of new Iraqi legal and political systems, support to prevent smuggling of Iraqi oil and establishment of an Iraqi Special Tribunal to try suspected criminals from the former regime, including Saddam Hussein.*

- *Involvement with detainee issues was only one portion of these officers' work.*

- *Although these officers reported some concerns in situation reports, none reported seeing any incidents which they believed represented contravention of the Geneva Conventions.*

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- *A number of ADF personnel visited Abu Ghraib prison as part of their duties after it began operating as a US-run detention facility in July 2003.*
- *These included Major O'Kane, and ADF officers working as lawyers in the Coalition Provisional Authority, as well as ADF personnel based at the Australian National Headquarters in Baghdad.*

- *And as I have said before, while these officers reported some concerns in situation reports, none reported seeing any incidents which they believed represented contravention of the Geneva Conventions.*

IF ASKED: About Major O’Kane’s involvement in prisoner abuse allegations.

- *While Major O’Kane’s situation reports referred to work he was undertaking in response to ICRC communications, none contained reference to abuse, or that he held concerns regarding abuse of Iraqi detainees.*
 - *Major O’Kane was satisfied at the time that the ICRC’s concerns were being addressed through the US chain of command, which was appropriate, as the US military was responsible for detention centres in Iraq.*

IF ASKED: Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation of Iraqis?

- *No ADF personnel were involved in the interrogation of Iraqi prisoners.*
- *The Australian Iraq Survey Group contingent commander has confirmed that no Australian members of the ISG have been involved in the conduct of interrogations of detainees in Iraq.*
 - *Australian members of the ISG are only present at debriefings or meetings with sources who are offering to cooperate with the ISG.*
 - *Australian ISG members do, however, contribute to the development of questions put to detainees as part of the search for Iraqi WMD.*

IRAQ: PRISONERS OF WAR AND DETAINEES

3.24

POSSIBLE QUESTION: When was the Government aware of abuses of Iraqi detainees in US-led detention facilities?

TALKING POINTS

- As the Secretary of the Department of Defence and the Chief of the Defence Force has stated, the statement made on 28 May was made based on the best knowledge held at that time.
- The October working papers, which Major O’Kane used in the preparation of his response to the ICRC, were in the custody of Major O’Kane from his return to Australia in February 2004 until they were handed over to a Defence official in early May.
 - However, the significance of these working papers did not become fully clear to the Department of Defence until Sunday 30 May.
- I understand that the Australian Government did not receive a copy of the October working papers at any other time. I would emphasise that the ICRC considers its report as confidential communications between itself as the responsible power as confidential, therefore we would not expect to be provided with a copy of the October working papers.
- Australian Defence lawyers working in the coalition force headquarters and in the Coalition Provisional Authority were aware of ICRC concerns regarding the mistreatment of Iraqi detainees and conditions in US detention facilities. These officers were involved in facilitating and addressing the concerns raised by the ICRC, such as in the October working papers.
 - And in their situation reports which were sent to Canberra, these lawyers reported that concerns regarding detainee treatment were being properly addressed by the responsible powers, the US and the UK.

- But it is important to clarify that Australian Defence lawyers were not aware of, abuses of Iraqi detainees to the extent revealed in recent media reporting.
- The Prime Minister has asked me/the Minister for Defence to make a detailed statement to the Senate on this issue.

IF ASKED: About Major O’Kane’s post-deployment report?

- Major O’Kane submitted a post-deployment report at the end of his deployment in the coalition force headquarters. The report was reviewed by the Senate Estimates Committee.
- While working in the US-led coalition headquarters in a line position, Major O’Kane filed short weekly reports of his activities to the senior Australian officer in the coalition headquarters.
- None of Major O’Kane’s situation reports contained reference to abuse, or that he held concerns regarding abuse of Iraqi detainees. Major O’Kane’s reports did refer to work he was undertaking in response to the ICRC, but not to concerns regarding abuses.
- And Major O’Kane has advised that he told the Sydney Morning Herald journalist that none of these reports contained reference to abuse of Iraqi prisoners such as depicted in the photographs that have recently appeared in the media.
- At the time, Major O’Kane was satisfied that reports of concerns regarding detainee management were being addressed through the US chain of command which is appropriate as the US is the responsible power for Abu Ghraib.

IF ASKED: About ADF officers’ knowledge of the ICRC reports?

- ADF officers working in the coalition force headquarters and the Coalition Provisional Authority in Iraq were aware in October 2003 of ICRC concerns regarding detainee treatment, but were not aware of

the serious nature of these allegations before press reporting of the US investigation in January 2004.

IF ASKED: Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

- No Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to Government Ministers, prior to the release of the photographs.
- Nevertheless, the Defence Department considered it prudent to ensure that no Defence personnel had witnessed or been advised of detainee abuses. Therefore Defence undertook a survey of those whose duties might have involved contact with Iraqi detainees.
- These included personnel working in the Australian and coalition force headquarters, personnel working in the Iraq Survey Group, members of the security detachment, and Defence personnel working in the CPA.

IF ASKED: Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation of Iraqis?

- While ADF personnel have travelled to Abu Ghraib prison, I'm advised no ADF personnel were involved in the interrogation of Iraqi prisoners.
- The Australian Iraq Survey Group contingent commander has confirmed that no Australian members of the ISG have been involved in the conduct of interrogations of detainees in Iraq.
- Australian members of the ISG are only present at debriefings or meetings with sources who are offering to cooperate with the ISG.
- Australian ISG members do, however, contribute to the

development of questions put to detainees as part of the search for Iraqi WMD.

IF ASKED: Did a photograph of Major O’Kane at the Abu Ghraib prison appear on a Defence website?

- Yes. The photograph of Major O’Kane was published on a page in Defence’s intranet, and was distributed to a number of tri-service addressees via email. It was not published on the TDLS internet website. The story and photograph were withdrawn from the TDLS intranet. It was considered inappropriate for photographs from Abu Ghraib to be publicised in light of the allegations of abuse that had recently become public.

3.24

BACKGROUND

In a press conference on 1 June 2004, the Prime Minister stated that his statements abuse allegations which were made on 30 May were based on advice provided by the Department of Defence, and that this advice had subsequently been found to be wrong. The Prime Minister stated that he was very unhappy that he was misinformed by the Department. The Prime Minister reinforced that there was no implication that ADF personnel were involved in the abuse of Iraqi detainees.

In Question Time on 1 June 2004, the Prime Minister was asked when the Government first learned of allegations of abuse at Abu Ghraib prison. The Prime Minister replied that neither he nor the Minister for Defence knew of detainee abuse until April and that all the Prime Minister's advice was provided by the Department of Defence. The Prime Minister was asked about the Senate Estimates hearings and questions that were not answered by Defence officials relating to detainee abuse in Iraq and as on 31 May whether the Major O'Kane would appear before the Senate Committee. The Prime Minister replied that Major O'Kane would not appear.

The Prime Minister was also asked how it had taken only a day for two opposition Senators to find out in a day what 6 ADF lawyers knew of prisoner abuse allegations and also why Defence removed a photo of Major O'Kane in Abu Ghraib from its website. The Prime Minister responded that the matter had been dealt with at Senate Estimates and the photo is a matter in control of Defence. The Prime Minister was also asked if the 2004 February Red Cross report detailed violations of humanitarian law observed prior to November 2003 and if the Prime Minister had received the report. The Prime Minister replied that he would seek advice on the matter.

In Question Time (31 May 2004) in the House of Representatives the Prime Minister was asked why he had changed his view on the ICRC's October report. The Prime Minister replied that he had been informed on the report by the Department of Defence and that he had asked to see a copy of the report. The Prime Minister reinforced that he was not aware of the extent of abuse allegations until late April 2004. The Prime Minister was also asked why he did not advise Parliament of Major O'Kane's visits to Abu Ghraib prison, and on why Major O'Kane did not appear before the Senate Estimates Committee in person.

Media

On 3 June 2004 all major Australian newspapers have reported head of the DFAT Iraq Task Force, John Quinn's, 2 June statement to Senate Estimates that both DFAT and the Attorney-General's Department were advised of allegations of mistreatment of prisoners in November 2003. It was reported that then Iraqi Human Rights Minister, Adbel Bassat Turki, raised concerns regarding lack of respect for detainees, overcrowding, limited access to lawyers and the accuracy of information used to detain people during an informal meeting with an Australian member of the CPA, LTCOL Paul Muggleton. It was reported that LTCOL Muggleton included the claims in a SITREP forwarded to Defence, DFAT and the Attorney-General's Department, noting that they lacked specificity.

The Herald Sun also reported on 3 June that two more SITREPS were produced on 3 February and 15 February respectively, which quoted the serious allegations and highly critical material in the ICRC report. The Herald Sun then claimed that PM&C was also aware of the allegations in the SITREPS. It was reported that, according to John Quinn, PM&C was included in the SITREP loop from March 2004.

The Age (2 June 2004) has claimed that “it’s Children Overboard all over again” and reported statements by the Prime Minister that he was unhappy at being misled by Defence. The Sydney Morning Herald (2 June 2004) claimed that “the Iraq prison torture and the boat people episodes have involved an alleged failure of defence authorities to alert higher-ups to facts unpalatable to the Government”.

The Age (2 June 2004) has reported that the Prime Minister “announced the Defence Minister Robert Hill would make a statement to Parliament detailing all the information had received about Abu Ghraib”.

The Herald Sun (2 June 2004) claimed that “The Howard Government was almost certainly aware of allegations of the torture of Iraqi prisoners almost a year ago, Amnesty International has claimed. The Daily Telegraph (2 June 2004) has claimed that “the Defence Department has left John Howard stranded again and that the again the issue is failed communication”.

The Australian Financial Review (2 June 2004) has claimed that “Mr Howard, Senator Hill, the CDF and Secretary Smith have all made incorrect public statements in recent days”.

The Sydney Morning Herald (SMH) 1 June 2004 reported on details of Major O’Kane’s visits to the Abu Ghraib prison and focused on the 31 May 2004 Senate Estimates hearings. The article claimed “the Secretary, Ric Smith and General Peter Cosgrove were also shown to have made misleading statements”. The SMH further claimed that “the trio at the apex of Australia’s defence establishment brought discredit upon themselves and the armed services during the saga of what Australian’s knew about allegations of prisoner abuse in Iraq”.

The Courier Mail (1 June 2004) has claimed that “at least seven Australian military lawyers had visited the notorious Abu Ghraib prison in Baghdad and heard nothing, according to the military”. The article further reported on the outcomes of the Senate Estimates hearing on 31 May 2004.

The Age newspaper (1 June 2004) reported on the senate estimates hearings on 31 May 2004, the article claimed that Major O’Kane was “barred from appearing before the estimates hearing by defence Minister Robert Hill”. The Courier Mail (1 June 2004) Establishment slips in shifting sands over scandal, reported that “Major O’Kane has known about horrific events at Abu Ghraib since some time late last year, possibly as early as October”.

The ABC Online 1 June 2004 reports that “the PM backs gag on soldiers Abu Ghraib evidence” and the ABC Online 31 May reported that “Major O’Kane barred from Senate Estimates” and further reported “Government accused of cover-up in barring O’Kane from hearings”.

The Australian domestic media continued heavy coverage of the allegations regarding Major O'Kane over the weekend and in today's media (31 May 2004). The Age newspaper claimed that "Defence Minister Robert Hill is trying to stop the Australian military lawyer who dealt with claims of abuse of Iraqi prisoners from appearing before a parliamentary committee on Monday". The Sydney Morning Herald, the Australian, the Canberra Times and the Adelaide Advertiser all carry stories regarding the O'Kane claims and that "he is not expected to face parliamentary committees due to be held today".

The Adelaide Advertiser (31 May 2004) contends that "an Australian military lawyer stationed in Iraq has told the Federal Government he knew nothing of prisoner abuse claims before January, Defence Minister Robert Hill said yesterday".

On 27 May, The Sydney Morning Herald carried a report which claimed that an Australian military officer stationed in Baghdad was aware of allegations of prisoner abuse from October 2003. The report claimed that as Major George O'Kane was involved in the preparation of a response to an October 2003 ICRC report, this undercut Government assurances that they knew nothing of the abuses.

An article in the June 1 edition of The Bulletin magazine, quotes "diplomatic and military sources" as claiming that "Australians were aware of the abuse allegations" prior to the official ICRC report that was provided to the CPA in February 2004 and that this would have been "reported to Canberra via cables". This report also claimed that an Amnesty International report on detainee abuses would have been provided to the Government in July 2003.

ADF Involvement

During OPERATION CATALYST, over 3000 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 302 personnel may have had some involvement with Iraqi Prisoners of War (PWs) by virtue of their official duties. Of these 301 personnel the Strategic Operations Division has managed to contact 299 with the remaining 3 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 3 persons.

Those contacted have been asked whether they had any involvement with Iraqi PWs or detainees and if so, whether they had seen or otherwise known, of any alleged abuse or mistreatment of those PWs or detainees. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

58 respondents indicated they had some limited involvement with Iraqi PWs or detainees. Most of these respondents had visited Abu Ghraib prison, Camp Cropper or other US holding facilities, or had witnessed PWs being transported.

ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Sect 41

3 June 2004

IRAQ - US LEGAL REPRESENTATIVES

3.25

POSSIBLE QUESTION: - Has Defence been contacted by the legal representatives of US service personnel being investigated for abuse of Iraqi POWs? Have they requested any documents from Defence? What is Defence's response to these requests?

TALKING POINTS:

- Defence has not been contacted by legal representatives of US personnel being investigated for abuse of Iraqi POWs.
- Therefore, legal representatives of US personnel have not requested documents from Defence.
- Defence has not responded to requests as none have been made.

3.25

BACKGROUND

In today's press there are two articles, in the Sydney Morning Herald and The Age, that quote one US legal representative of US service personnel being investigated for abuse of Iraqi POWs, as having sought discovery of documents relevant to the investigation, including those drafted by Major O'Kane. It is not clear from the report whether discovery has been sought in the US or an action has been brought in Australia.

CONSULTATION: Strategic Operations Division, DMPLS

ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Sect 41

2 June 2004

REQUESTS FOR MAJ O'KANE TO APPEAR BEFORE US
ENQUIRIES

3.29

POSSIBLE QUESTION: Has MAJ George O'Kane been asked to appear before any US enquires into detainee abuses in Iraq?

TALKING POINTS:

- No formal approach has been made to Australia regarding MAJ O'Kane appearing before US Congressional enquires into detainee abuse.
- The US Army has written to the Australian Defence Organisation requesting that MAJ O'Kane respond to certain written enquires.
- This enquiry is under consideration.

DECLASSIFIED

BACKGROUND:

During the Prime Minister's visit to Washington over the 2nd and 3rd of June to discuss FTA issues, Congresswoman Nancy Pelosi (Democrat), Minority Leader in the House of Representatives, informally raised the issue of Major George O'Kane. Congresswoman Pelosi asked whether Major O'Kane had provided the Australian Government with information about Abu Ghraib beyond that included in the ICRC reports.

Congresswoman Pelosi expressed an interest in receiving evidence from Major O'Kane, either in person before a Congressional committee or by obtaining a copy of the documents he brought back with him from Iraq.

On 10 June 2004, the US Army legal advisor to Major General (MG) Fay wrote to BRIG Peter Hutchinson, COMD JTF633, regarding MG Fay's investigation into alleged misconduct at Abu Ghraib.

The letter requests a series of questions be presented to MAJ O'Kane for his response by Wednesday, 16 June 2004.

At the 31 March 2004 Senate Estimates hearing Minister Hill declined to make MAJ O'Kane available to appear before the Committee, stating:

I gave that careful consideration and concluded that it was not in accord with the usual practice. In this inquiry into the estimates it is our responsibility to bring senior officials and senior officers to the table to account for public expenditure; it is not designed to be an interrogation of relatively junior military officers on an individual basis. There may be other ways in which that can be done, but I certainly do not think it is the role of this committee.

AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Sect 41

15 June 2004

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AUSTRALIAN GOVERNMENT INTERPRETATION OF
ARTICLE 5 OF FOURTH GENEVA CONVENTION

3.30

POSSIBLE QUESTION: Does the Australian Government support the legal view that was expressed in the draft letter prepared for Brigadier General Karpinski in December 2003?

TALKING POINTS:

- The Australian Government takes a different legal view to that expressed in the draft letter prepared for Brigadier General Karpinski.
- At issue is the interpretation to be placed on Article 5 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.
- It is the Australian Government's view that the only applicable provision at the relevant time was Paragraph 2 of Article 5, which applies to 'occupied territory'.

3.30

BACKGROUND

On 24 Dec 03, Brigadier General Janis Karpinski, Commander 800th Military Police Brigade, Iraq, wrote to the International Committee of the Red Cross' representative in Iraq, Ms Eva Svoboda. The letter was drafted in response to the International Committee of the Red Cross' confidential working Papers, which claimed that conditions in certain detention facilities contravened internment standards in the Geneva Conventions.

In the Four Corners programme of June 7th, the legal advice provided to Brigadier General Karpinski was highlighted. Brigadier General Mark Kimmitt, a spokesman for CJTF 7, said that in Iraq, all security detainees were entitled to treatment in accordance with the Geneva Conventions. When questioned by Liz Jackson following this statement, Brigadier General Kimmitt stated that there were no exceptions. He said that he "can't speak to why Brigadier General Karpinski would raise those charges, but that is not correct".

Article 5 of the Fourth Geneva Convention has three separate paragraphs, and Pictet's Commentary on the Geneva Convention notes that it presents significant difficulties in interpretation.

It is the Australian Government's view that the only applicable provision at the relevant time was Paragraph 2 of Article 5, which applies to 'occupied territory'.

Under this provision only a narrow derogation of rights of communication is allowed when an individual is under definite suspicion of activity hostile to the security of the Occupying Power. Absolute military security must require this action for it to be justified.

The draft letter from Brigadier General Karpinski to the International Committee of the Red Cross seemingly draws on the first paragraph of Article 5 of the Fourth Geneva Convention, in widening the extent to which derogation of individual rights can be made under the Fourth Geneva Convention.

It is the Australian Government's view that the first paragraph of Article 5, is not applicable in the occupied territory of Iraq.

The reference in the Article 5, paragraph 1 to 'the territory of a Party to the conflict' actually is a reference to the home territory of a Party to the conflict, that is, the United States.

Broader scope for derogation of rights under the Fourth Convention is permitted in the defence of the homeland.

Notwithstanding how the first two paragraphs of Article 5 are interpreted, paragraph 3 of Article 5 guarantees that all persons shall be treated humanely.

AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Sect A

15 June 2004

NEW YORK TIMES REPORT OF EARLY INTERNAL US ARMY
REPORTS OF PRISONER ABUSE

3.31

POSSIBLE QUESTION: Did ADF officers serving in the US Combined Joint Task Force Headquarters in Iraq see internal reports, beginning in November 2003, in which the Detainee Assessment Branch reported allegations of prisoner abuse?

TALKING POINTS:

- Defence has confirmed today that no ADF officer saw internal reports from what is described by the *New York Times* as the Detainee Assessment Branch or saw any reports that referred to abuse of detainees prior to the announcement by the US Department of Defense in January 04.

3.31

BACKGROUND:

A report in the 14 June New York Times alleges that a unit in the US Combined Joint Forces Command, known as the Detainee Assessment Branch, regularly reported allegations of detainee abuses in internal reporting as far back as November 2003.

The article alleges these reports were seen by a three member board which included BRIGGEN Karpinski (Commander Abu Ghraib) and MAJGEN Fast (senior US Army intelligence officer in Iraq). The report further claims that 'military judge advocates' and 'lawyers on a magistrate board' also reviewed the reports.

Defence has checked with ADF personnel working in CJTF-7 at the time regarding their knowledge of reports from the Detainee Assessment Branch. No ADF personnel received reports from the Detainee Assessment Branch or saw any reports that referred to abuse of detainees.

AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Sed A

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