

## QUESTION TIME BRIEF 3.10

IRAQ: PRISONERS OF WAR AND  
DETAINEES

31 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

### TALKING POINTS

- No Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to myself, 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*.
- 302 ADF personnel who may have had contact with US captured Iraqi Prisoners of War or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of prisoners or detainees.
- To date, 298 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi prisoners or detainees during their deployment of the nature of the recent allegations.
- Of these 302 personnel, 60 have reported some involvement with Iraqi prisoners or detainees by virtue of their official duties.
- Of these 60 personnel, 15 were questioned in more detail to clarify the nature and extent of their involvement.

- I am advised that none of the ADF personnel identified and contacted regarding their visit to Abu Ghraib prison witnessed any abuse of Iraqi detainees of the nature of the recent allegations nor were they involved in any interrogations of detainees.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

## 3.10

### BACKGROUND

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

### ADF Involvement

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 301 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 286 with the remaining 15 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 15 persons.

Those contacted have been and 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

Section 41, a RAN Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. MAJ George O'Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/2004/219 DATED 12 May 2004).

### Media

*The Secretary and the CDF issued on Friday 28 May 2004 a joint Media Release concerning allegations of abuse of Iraqi Detainees. The Release reiterated that "Defence was not aware of serious mistreatment of detainees from the time of the CNN media reporting in late January 2004, it only became aware of the extent of the allegations through the publications of photographs in April 2004".*

*The Canberra Times (31 May 2004) reported on new allegations of abuse in Iraq allegedly carried out by coalition nations including the US and Poland.*

ORIGINAL AUTHORISED BY: CONTACT OFFICER: MINISTERIAL ADVISER:

Section 41

31 May 2004

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## 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:

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect



capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

## 3.10

### BACKGROUND

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

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 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

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

Section 41

1 June 2004

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

FAQ: 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:**

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- We have previously advised that Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.

The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

The reliability of whether that is all of the incidents is now not certain as a result of the internal review that Defence is conducting into the issue.

A complete account of the issue will be provided in the Minister's address to the Senate on the issue, as foreshadowed by the Prime Minister.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

### 3.10

#### BACKGROUND

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

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

**AUTHORISED BY:**

Shane Carmody  
DEP SEC S

Section 41

**CONTACT OFFICER: MINISTERIAL ADVISER:**

Section 41

3 June 2004

## 3.10

### BACKGROUND

Since 13 May, international media outlets have reported heavily on the allegations of abuse of Iraqi detainees by coalition forces. International and domestic media have not reported in the past fortnight on Australian involvement or knowledge of alleged abuses.

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

### Op CATALYST

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

**ADF Involvement**

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division that 296 personnel may have had some involvement with Iraqi Prisoners of War (PWs) by virtue of their official duties. Each of these 296 personnel was contacted and 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.

To date, 265 responses have been received. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

Fifty two 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

Section 41, a RAN Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. MAJ George O’Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/2004/219 DATED 12 May 2004).

On 13 May, the Sydney Morning Herald reported your comments from 12 May that the images of abuse of Iraqi prisoners would be a setback in the war against terrorism. The Age claimed on 13 May that you had said the US was taking appropriate action over the abuses.

On 12 May, The Sydney Morning Herald, The Australian, The Advertiser (Adelaide), The Canberra Times and The Courier Mail all reported on statements in Parliament by you on your knowledge of abuse of prisoners in Iraq. The articles quoted your statements in Question Time that the Government had been made aware of reports of abuse in press reports in January 2004 and that the Government was aware of the ICRC report several months ago but that it did not receive a copy of the report as it was not a Detaining Power. The Senate also passed a motion on 11 May condemning the abuse of prisoners.

Minister Downer also stated in Parliament on 11 May that there was no record of ADF or Australian involvement in these abuses. The Australian (25 May 2004) claims that senior US Politicians predict senior Military Commanders will face courts martial over the alleged abuse of Iraqi detainees.

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

Section 41

25 May 2004

**WARNING - this is not the latest version of this QTB. Please use the Main**

27 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

### TALKING POINTS

- No *Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to myself, 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.*
- 302 ADF personnel who may have had contact with US captured Iraqi Prisoners of War or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of prisoners or detainees.
- To date, 290 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi prisoners or detainees during their deployment of the nature of the recent allegations.
- Of these 302 personnel, 59 have reported some involvement with Iraqi prisoners or detainees by virtue of their official duties.
- Of these 59 personnel, 15 were questioned in more detail to clarify the nature and extent of their involvement.



- I am advised that none of the ADF personnel identified and contacted regarding their visit to Abu Ghraib prison witnessed any abuse of Iraqi detainees of the nature of the recent allegations nor were they involved in any interrogations of detainees.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

### 3.10

#### BACKGROUND

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

#### ADF Involvement

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 301 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 286 with the remaining 15 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 15 persons.

Those contacted have been and 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

Section 41 a RAN Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. MAJ George O'Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/2004/219 DATED 12 May 2004).

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

Shane Carmody  
DEPSEC S

Sect 41  
ADEMEROW

Section 41

Section 41

27 May 2004

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

31 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** Did any ADF personnel witness abuses of Iraqi detainees at Abu Ghraib prison?

### TALKING POINTS

- No *Australian Defence personnel reported concerns with the treatment of Iraqi detainees which were serious enough to necessitate advice to myself, 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.*
- 302 ADF personnel who may have had contact with US captured Iraqi Prisoners of War or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of prisoners or detainees.
- To date, 290 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi prisoners or detainees during their deployment of the nature of the recent allegations.
- Of these 302 personnel, 59 have reported some involvement with Iraqi prisoners or detainees by virtue of their official duties.
- Of these 59 personnel, 15 were questioned in more detail to clarify the nature and extent of their involvement.

- I am advised that none of the ADF personnel identified and contacted regarding their visit to Abu Ghraib prison witnessed any abuse of Iraqi detainees of the nature of the recent allegations nor were they involved in any interrogations of detainees.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.



### 3.10

#### BACKGROUND

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

#### ADF Involvement

During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division (SOD) that 301 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 286 with the remaining 15 unavailable due to discharge and overseas travel. SOD is endeavouring to contact the remaining 15 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

Section 41, a RAN Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. MAJ George O'Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/2004/219 DATED 12 May 2004).

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

Shane Carmody  
DEPSEC S

Section 41

Section 41

27 May 2004

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

**AUTHORISED BY:**

Shane Carmody      AVM Chris Spence  
DEPSEC S            HSO

**MINISTERIAL ADVISER:**

Section 41

Section 41

13 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

24 May

WARNING - this is not the latest version of this OTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.
- While Australia acted consistently with international law and its international obligations during the conflict in Iraq, UN Security Council Resolution 1483 on 22 May 2003 did not name Australia as an occupying power.
- Australia has not captured any prisoners and is not a Detaining or transferee Power under the Geneva Conventions.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- *Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.*
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.

- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

*IF ASKED : Did any Australian Defence Force personnel have knowledge of the alleged abuse of Prisoners of War (PWs) or detainees in Iraq?*

- *296 ADF personnel who may have had contact with US captured Iraqi PWs or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of PWs or detainees.*
- *To date, 265 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi PWs or*

*detainees during their deployment, of the nature of the recent allegations.*

- *Of these 296 personnel, 52 have reported some involvement with Iraqi PWs or detainees by virtue of their official duties.*
- *Of these 52 personnel, 13 are being questioned in more detail to clarify the nature and extent of their involvement.*

## 3.10

### BACKGROUND

*Since 13 May, international media outlets have reported heavily on the allegations of abuse of Iraqi detainees by coalition forces. International and domestic media have not reported in the past fortnight on Australian involvement or knowledge of alleged abuses.*

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

### Op CATALYST

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

### *ADF Involvement*

*During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division that 296 personnel may have had some involvement with Iraqi PWs by virtue of their official duties. Each of*

these 296 personnel was contacted and 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.

To date, 265 responses have been received. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.

Fifty two 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.

**Section 41**, a Navy Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. **Section 41** was soon after returned to Australia.

MAJ George O'Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/20042191 and QTB dated 12 May 2004).

**AUTHORISED BY:**

Shane Carmody      AVM Chris Spence  
DEPSEC S            HSO

**MINISTERIAL ADVISER:**

**Section 41**

**Section 41**

24 May 2004

**CONTACT OFFICER:**

**Section 41**

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**



24 May

WARNING - this is not the latest version of this OTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.
- While Australia acted consistently with international law and its international obligations during the conflict in Iraq, UN Security Council Resolution 1483 on 22 May 2003 did not name Australia as an occupying power.
- Australia has not captured any prisoners and is not a Detaining or transferee Power under the Geneva Conventions.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- *Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.*

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.

- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.

- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.

- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.

- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

*IF ASKED : Did any Australian Defence Force personnel have knowledge of the alleged abuse of Prisoners of War (PWs) or detainees in Iraq?*

- *296 ADF personnel who may have had contact with US captured Iraqi PWs or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of PWs or detainees.*
- *To date, 265 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi PWs or*

*detainees during their deployment, of the nature of the recent allegations.*

- *Of these 296 personnel, 52 have reported some involvement with Iraqi PWs or detainees by virtue of their official duties.*
- *Of these 52 personnel, 13 are being questioned in more detail to clarify the nature and extent of their involvement.*

## 3.10

### BACKGROUND

*Since 13 May, international media outlets have reported heavily on the allegations of abuse of Iraqi detainees by coalition forces. International and domestic media have not reported in the past fortnight on Australian involvement or knowledge of alleged abuses.*

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

### Op CATALYST

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

**ADF Involvement**

*During OPERATION CATALYST, 3250 ADF personnel were deployed in the Middle East Area of Operations. It was determined by Strategic Operations Division that 296 personnel may have had some involvement with Iraqi PWs by virtue of their official duties. Each of these 296 personnel was contacted and 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.*

*To date, 265 responses have been received. Each ADF member reported they were not aware of any allegations of mistreatment of Iraqi PWs or detainees.*

*Fifty two 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. Legal officers in Australia are making personnel telephone contact with 13 members to further clarify the nature of their involvement with PWs.*

*Section 41, a Navy Reservist deployed as a media director to Coalition forces, reported a number of incidents involving US detention of Al Jazeera journalists that he felt were excessive. He reported his concerns to his US superiors. Section 41 was soon after returned to Australia.*

*MAJ George O'Kane, an Army legal officer posted to CJTF 7, visited Abu Ghraib on four occasions. You have been briefed on this matter previously (see DEPSEC OUT/20042191 and QTB dated 12 May 2004).*

**AUTHORISED BY:**

Shane Carmody      AVM Chris Spence  
DEPSEC S            HSO

**MINISTERIAL ADVISER:**

Section 41

Section 41

24 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

25 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** When did you become aware of the contents of the International Committee of the Red Cross (ICRC) report into the treatment of Iraqi detainees held by the coalition?

### TALKING POINTS

- On 10 February 2004, the head of the ICRC delegation in Iraq forwarded a report on the treatment of detained persons in Iraq to the head of the Coalition Provisional Authority, Ambassador Paul Bremer and the Commander of Combined Joint Task Force – 7, General Ricardo Sanchez.
  - In keeping with the usual practice of the ICRC, the report was only made available to the Detaining Powers. The ICRC has stated that it “submitted its confidential reports to the authorities responsible on the basis of its mandate under the Geneva Conventions”.
  - As Australia is not managing any detention centres in Iraq (nor is it a Detaining Power), the ICRC did not provide the Australian Government with a copy of the report.
- In response to the report, Ambassador Bremer directed officials to take steps to follow-up on the issues raised by the ICRC.
- Australian officers in the Coalition Provisional Authority and the coalition’s military headquarters in Iraq were involved in the issue to the extent of facilitating the ICRC’s investigations and its contact with the coalition leadership in Iraq.
- In February 2004 the Australian officers reported back to the Department of Defence in Canberra that they were working on issues related to an ICRC investigation of detention practices in Iraq in their role as CPA staff
  - The report was provided to the US and the UK as occupying powers. A copy was not provided to Australia.

- I was not advised by the Department of Defence of the reporting from the officers in Iraq on the ICRC report
- I am advised that the reporting focussed on the legal process issues rather than allegations of abuse about which the officers did not know the full extent.
- This advice was conveyed to me by the Department of Defence in early May 2004.
- The Australian Government abhors any violation of international humanitarian law. We know that this abhorrence is shared by the US and UK Governments. The Australian Government welcomes the steps being taken to fully investigate the allegations, and take remedial action to ensure that abuse such as that alleged will not occur in future.

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

- I am advised that none of the ADF personnel who have so far been identified and contacted regarding their visit to Abu Ghraib prison witnessed any abuse of Iraqi detainees of the nature of the recent allegations nor were they involved in any interrogations of detainees.
- For example, ADF personnel were involved in facilitating visits to the prison by the ICRC.
- 296 ADF personnel who may have had contact with US captured Iraqi Prisoners of War or who may have visited Abu Ghraib or other detention or prison facilities have been contacted to ascertain if they had any knowledge of possible abuse of prisoners or detainees.
- To date, 265 responses have been received. All ADF personnel reported they were not aware of any mistreatment of Iraqi prisoners or detainees during their deployment of the nature of the recent allegations.



- Of these 296 personnel, 52 have reported some involvement with Iraqi prisoners or detainees by virtue of their official duties.
- Of these 52 personnel, 13 are being questioned in more detail to clarify the nature and extent of their involvement.

**IF ASKED:** Can the Minister advise of a photograph of an ADF officer at the Abu Ghraib prison appeared in the Defence Legal Service newsletter?

- The ADF officer in the photograph is an Army Legal Officer. The officer was attached as a Legal Officer to the Office of the Staff Judge Advocate General in the coalition military headquarters in Iraq, CJTF-7, between July 2003 and February 2004.
- During the officer's deployment he visited Abu Ghraib on several occasions, in addition to another detainee centre. This was to provide legal advice to US military elements at the prison, assist in a detainee transfer operation, and to facilitate and coordinate the visit by the ICRC to the prison in January 2004.
  - The officer played a pivotal role in ensuring that the ICRC had access to the prison and to the detainees, thereby helping the ICRC to fulfil its role in protecting detainees and ensuring that the relevant Geneva Conventions are adhered to.
- On no occasion did the officer witness any incidents that he assessed were inconsistent with the Geneva Conventions. Nor was he aware of the details of the detainee abuse allegations which have surfaced in recent weeks.
  - He has also stated that he did not see, and was not aware of the existence of, the photographs which have recently appeared in media reporting.
- While the officer was working in a US-led coalition headquarters in a line position, he filed frequent reports of his activities to his superior Australian Defence Force officer. At no time did the officer report

any concerns that he held over the conditions under which the detainees were being held at Abu Ghraib prison.

**IF ASKED:** about the publication of the photograph?

- The photograph appeared in an internal Defence newsletter entitled The Buzz, which is distributed to approximately 400 Defence legal personnel. These personnel include permanent ADF, Defence civilians, and ADF Reserve Legal Officers.
- The edition of The Buzz containing the officer's photograph was distributed on 3 May 2004.
- The photograph of the officer was included in the newsletter due to the desire to include in the newsletter some information about the types of work Defence Legal Service personnel perform as a human interest article. This is in addition to the newsletter's articles which convey items of professional and administrative interest to the members of the Defence Legal Service.

**IF ASKED:** What responsibility does Australia have for prisoners captured during the Iraq war?

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.
- While Australia acted consistently with international law and its international obligations during the conflict in Iraq, UN Security Council Resolution 1483 on 22 May 2003 did not name Australia as an occupying power.
- Australia has not captured any prisoners and is not a Detaining or transferee Power under the Geneva Conventions.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five

incidents of capture of enemy prisoners of war.

- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** Have there been any instances since the conflict concluded of Australian forces being involved in the interrogation or incarceration 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- Because Australian forces captured no prisoners during the recent war in Iraq, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.

- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March 2003. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the Detaining Power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March 2003. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 April 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April 2003. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

### 3.10

#### BACKGROUND

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

#### Op CATALYST

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.

#### AUTHORISED BY:

Shane Carmody      AVM Chris Spence

#### MINISTERIAL ADVISER:

Section 41

Section 41

12 May 2004

#### CONTACT OFFICER:

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

# 3.10

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the possibility of the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we could meet our international obligations relating to the transfer of prisoners captured by Australian forces.
- But as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or transferee power.

- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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.
- *While ADF personnel have travelled to Abu Ghraib prison, no ADF personnel were involved in the interrogation of Iraqi prisoners.*

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of approximately 120 enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and



Australia's obligations under the Geneva Conventions were not engaged.

- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.
- A member of the US forces was formally responsible for the capture and custody.

**IF ASKED:** What has happened to those particular captives?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

### 3.10

#### BACKGROUND

*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 which reported your 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.*

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

#### Op CATALYST

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.

#### AUTHORISED BY:

Shane Carmody      AVM Chris Spence

#### MINISTERIAL ADVISER:

Section 41

Section 41

13 May 2004

**CONTACT OFFICER:**

Sasha. 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

12 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the possibility of the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we could meet our international obligations relating to the transfer of prisoners captured by Australian forces.
- But as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or transferee power.

- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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.
- *While ADF personnel have travelled to Abu Ghraib prison, no ADF personnel were involved in the interrogation of Iraqi prisoners.*

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of approximately 120 enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and

Australia's obligations under the Geneva Conventions were not engaged.

- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

· During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

· No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.



### 3.10

#### BACKGROUND

*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 which reported your 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.*

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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

#### Op CATALYST

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.

#### AUTHORISED BY:

Shane Carmody      AVM Chris Spence

Section 41

#### MINISTERIAL ADVISER:

Section 41

13 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

13 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

**IRAQ: PRISONERS OF WAR AND DETAINEES****3.10**

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

**TALKING POINTS**

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.
- *While Australia acted consistently with international law and its international obligations during the conflict in Iraq, UN Security Council Resolution 1483 on 22 May 2003 did not name Australia as an occupying power.*
- *Australia continues to share general responsibilities with all coalition countries as part of our contribution toward rebuilding Iraq.*
- *But Australia does not have any responsibilities towards the treatment or handling of PWs or civilian detainees as Australia has not captured any prisoners and is not a Detaining or transferee Power under the Geneva Conventions.*

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.

- In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the possibility of the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we could meet our international obligations relating to the transfer of prisoners captured by Australian forces.
- But as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or transferee power.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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.

- *While ADF personnel have travelled to Abu Ghraib prison, no ADF personnel were involved in the interrogation of Iraqi prisoners.*

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.

- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.
- A member of the US forces was formally responsible for the capture and custody.

**IF ASKED:** What has happened to those particular captives?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

## 3.10

### BACKGROUND

*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 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.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

### Op CATALYST

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.



**BACKGROUND**

*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 BRIG Maurie McNam, the commander of Australia forces in the Middle East, which said that Australia had obligations to any prisoners captured by Australian forces.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

**Op CATALYST**

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.

**AUTHORISED BY:**

Shane Carmody  
DEPSEC S

AVM Chris Spence  
HSO

**MINISTERIAL ADVISER:**

Section 41

Section 41

12 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

12 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or an Accepting Power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we would continue to be responsible for the treatment of any prisoners captured by Australian forces.
- But, as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or an Accepting Power under the Geneva Convention.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were later transported by the Australian landing craft attached to HMAS KANIMBLA where they remained. Those prisoners remained in custody of US forces at all times while they were aboard the KANIMBLA.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter

remained in US custody.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** What has happened to the prisoners of war involved on 11 April?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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.

**BACKGROUND**

*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 BRIG Maurie McNam, the commander of Australia forces in the Middle East, which said that Australia had obligations to any prisoners captured by Australian forces.

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

**Op CATALYST**

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.

**AUTHORISED BY:**

Shane Carmody      AVM Chris Spence

**MINISTERIAL ADVISER:**

Section 41

Section 41

12 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

12 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- *Australia is not responsible for managing any detainees in Iraq.*

*IF ASKED: About Australian involvement with prisoners during the war?*

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or *transferee power* and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account *the possibility of the taking of prisoners and civilian detainees.*
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK *to ensure that we could meet our international obligations relating to the transfer of prisoners captured by Australian forces.*
- But as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or *transferee power.*

- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- *There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.*

- *Nor would it be likely, given the nature of our military commitment in Iraq.*

- *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:** How did Australian forces handle captives during the conflict in Iraq?

- Australian forces did not capture or hold any captives.

- Australian forces are trained to ensure they treat all captives humanely and in compliance with the laws of armed conflict. Australian personnel receive specific training appropriate to the operations that they are undertaking.

- Australian and coalition planning for the conflict in Iraq specifically took into account the *possibility of the* taking of prisoners of war and civilian detainees. Coalition arrangements were put in place to facilitate these plans. Australia's legal obligations were duly



considered by Government and the ADF and were reflected in the measures adopted.

- As required by the Geneva Conventions, the Government established a National Information Bureau in order to process information concerning prisoners of war in the event of their capture by Australian forces.
- As events transpired, and because Australian forces did not effect any captures, there was no requirement for the Government to use the National Information Bureau.
- During the conflict in Iraq, Australian involvement with both prisoners of war and civilian detainees was limited because of the nature, size and tasking of the Australian forces deployed.

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in *five* incidents of capture of enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva *Conventions* were not engaged.
- The first *two incidents* involved the apprehension of *nine* prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA *during which time three* received medical attention. *The US was the detaining power for all nine prisoners on board KANIMBLA.*

- The *third* incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian *landing craft attached to HMAS KANIMBLA* where they remained in custody of US forces at all times.
- *The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.*
- The *fifth* incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.
- A member of the US forces was formally responsible for the capture

and custody.

The role that each Coalition nation's forces play in these kinds of scenarios depended upon many factors including:

- the nature, size and tasking of the force available,
- operational security of the force, and
- the need to ensure that captives were placed in the hands of the Coalition force elements best able to afford them appropriate care and treatment clear of the battlefield.

**IF ASKED:** What has happened to those particular captives?

A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

**BACKGROUND**

*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 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.*

On 23 April 2003, the Shadow Minister for Defence issued a media statement which drew attention to the issue of transfer of prisoners of war to coalition partners. That media statement, in part, demanded that the government declare what condition it had imposed on the handing over of prisoners of war captured by Australian forces to the United States, as well as referring to Australia's obligations to those prisoners under the Geneva Conventions.

**Op CATALYST**

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.

**AUTHORISED BY:**

Shane Carmody      AVM Chris Spence

**MINISTERIAL ADVISER:**

Section 41

Section 41

12 May 2004

**CONTACT OFFICER:**

Section 41

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

13 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australia is not responsible for managing any detainees in Iraq.

**IF ASKED:** About Australian involvement with prisoners during the war?

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or transferee power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the possibility of the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we could meet our international obligations relating to the transfer of prisoners captured by Australian forces.
- But as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or transferee power.

- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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 Australia hand over captives to its Coalition partners and if so, under what conditions?

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five incidents of capture of approximately 120 enemy prisoners of war.
- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.

- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA where they remained in custody of US forces at all times.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of

the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.

- A member of the US forces was formally responsible for the capture and custody.

**IF ASKED:** What has happened to those particular captives?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.



## **IRAQ: PRISONERS OF WAR AND DETAINEES**

**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

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

Section 41

17 June 2004

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

IRAQ: PRISONERS OF WAR AND DETAINEES

3.10

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

**TALKING POINTS:**

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or an Accepting Power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we would continue to be responsible for the treatment of any prisoners captured by Australian forces.
- But, as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or an Accepting Power under the Geneva Convention.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.

**IF ASKED:** How did Australian forces handle captives during the conflict in Iraq?

- Australian forces did not capture or hold any captives.
  - Australian forces are trained to ensure they treat all captives humanely and in compliance with the laws of armed conflict. Australian personnel receive specific training appropriate to the operations that they are undertaking.
  - Australian and coalition planning for the conflict in Iraq specifically took into account the taking of prisoners of war and civilian detainees. Coalition arrangements were put in place to facilitate these plans. Australia's legal obligations were duly considered by Government and the ADF and were reflected in the measures adopted.
  - As required by the Geneva Conventions, the Government established a National Information Bureau in order to process information concerning prisoners of war in the event of their capture by Australian forces.
- As events transpired, and because Australian forces did not effect any captures, there was no requirement for the Government to use the National Information Bureau.
  - During the conflict in Iraq, Australian involvement with both prisoners of war and civilian detainees was limited because of the nature, size and tasking of the Australian forces deployed.

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.

- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war. In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
  - The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
  - The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were later transported by the Australian landing craft attached to HMAS KANIMBLA where they remained. Those prisoners remained in custody of US forces at all times while they were aboard the KANIMBLA.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C- 130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
  - The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
  - Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
  - No formal transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.
- A member of the US forces was formally responsible for the capture and custody.
- The role that each Coalition nation's forces play in these kinds of scenarios depended upon many factors including:
  - the nature, size and tasking of the force available,
  - operational security of the force, and
  - the need to ensure that captives were placed in the hands of the Coalition force elements best able to afford them appropriate care and treatment clear of the battlefield.

**IF ASKED:** What has happened to those particular captives?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

- During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities .

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

- No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

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

- There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.
- Nor would it be likely, given the nature of our military commitment in Iraq.
- 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.

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

Shane Carmody  
DEPSEC S

AVM C. Spence  
HSO

Section 41

Section 4

Section 41

12 May 2004

**WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!**

12 May

WARNING - this is not the latest version of this QTB. Please use the Main Document in this group!

## IRAQ: PRISONERS OF WAR AND DETAINEES

**3.10**

**POSSIBLE QUESTION:** What responsibility does Australia have for prisoners captured during the Iraq war?

### TALKING POINTS

- No prisoners were captured by Australian forces during the recent war in Iraq.
- Australian forces were involved in assisting coalition partners in five incidents of capture of enemy prisoners of war.
- In each incident, Australia was not a Detaining Power or an Accepting Power and so Australia's obligations under the Geneva Convention were not engaged.
- Australian forces are trained to ensure that they treat all captives humanely and in compliance with the laws of armed conflict, including the Geneva Convention.
  - In addition, ahead of and during the conflict in Iraq in 2003, ADF planning took into account the taking of prisoners and civilian detainees.
- To that end, the Commander of the Australian Nation Headquarters in the Middle East signed a Memorandum of Understanding with the US and UK to ensure that we would continue to be responsible for the treatment of any prisoners captured by Australian forces.
- But, as I have just said, ADF personnel did not capture Iraqi prisoners, and while ADF personnel provided assistance to the US in its capture of prisoners, that did not make us a Detaining Power or an Accepting Power under the Geneva Convention.
- The US retained its obligations as Detaining Power during handling of all prisoners to which Australia provided assistance.



**IF ASKED:** How did Australian forces handle captives during the conflict in Iraq?

- Australian forces did not capture or hold any captives.
- Australian forces are trained to ensure they treat all captives humanely and in compliance with the laws of armed conflict. Australian personnel receive specific training appropriate to the operations that they are undertaking.
- Australian and coalition planning for the conflict in Iraq specifically took into account the taking of prisoners of war and civilian detainees. Coalition arrangements were put in place to facilitate these plans. Australia's legal obligations were duly considered by Government and the ADF and were reflected in the measures adopted.
- As required by the Geneva Conventions, the Government established a National Information Bureau in order to process information concerning prisoners of war in the event of their capture by Australian forces.
- As events transpired, and because Australian forces did not effect any captures, there was no requirement for the Government to use the National Information Bureau.
- During the conflict in Iraq, Australian involvement with both prisoners of war and civilian detainees was limited because of the nature, size and tasking of the Australian forces deployed.

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

- No prisoners were captured by Australian forces during the recent war in Iraq. Therefore, Australian forces did not have cause to hand over captives to coalition partners.
- Australian forces were involved in assisting coalition partners in five

incidents of capture of enemy prisoners of war.

- In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Conventions were not engaged.
- The first two incidents involved the apprehension of nine prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA during which time three received medical attention. The US was the detaining power for all nine prisoners on board KANIMBLA.
- The third incident involved the apprehension of approximately 45 prisoners of war by US forces, also on 21 March. Those prisoners of war were later transported by the Australian landing craft attached to HMAS KANIMBLA where they remained. Those prisoners remained in custody of US forces at all times while they were aboard the KANIMBLA.
- The fourth incident involved a section from 4 RAR (CDO) assisting US forces in escorting six prisoners of war on board an US C-130 used to transfer the prisoners to a detention facility. The prisoners remained in custody of US forces. This occurred on the night of 2 Apr 2003.
- The fifth incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian special forces provided security so that a member of the US forces could formally effect capture of those prisoners of war and the prisoners thereafter remained in US custody.
- Had Australian forces formally detained any captives, the nature and size of our commitment dictated that Australian forces would not themselves hold captives, but would rely on the Coalition partners who had deployed assets specifically for this task.
- No formal transfer was necessary in any of the incidents involving Australian forces, and so the issue of what conditions may have been

imposed is irrelevant.

**IF ASKED:** During the incident involving the capture of the bus on 11 April 2003, what role did the Australian Special Forces play?

- This was a well-conducted, effective Coalition operation, involving troops and assets from Australia, the UK and US. The primary role of the Australian Special Forces was to provide security, whilst the occupants of the vehicles were assessed by a member of the US forces.
- A member of the US forces was formally responsible for the capture and custody.
- The role that each Coalition nation's forces play in these kinds of scenarios depended upon many factors including:
  - the nature, size and tasking of the force available,
  - operational security of the force, and
  - the need to ensure that captives were placed in the hands of the Coalition force elements best able to afford them appropriate care and treatment clear of the battlefield.

**IF ASKED:** What has happened to those particular captives?

- A member of the US forces present at the incident site formally detained the personnel and effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

**IF ASKED:** What happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

· During their time on HMAS KANIMBLA the captives remained in US custody and were then transferred to more suitable US holding facilities.

**IF ASKED:** Did Australia report details of any captives to the International Committee of the Red Cross?

· No. That was the responsibility of our Coalition partners who detained captives under the Geneva Conventions.

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

· There have been no instances where Australian forces deployed on Operation CATALYST have been involved in these activities.

· Nor would it be likely, given the nature of our military commitment in Iraq.

· 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.