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AUSTRALIAN DEFENCE HEADQUARTERS
Chief of the Defence Force

MINUTE



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CDF/OUT/2004/415

Minister

For Action By: No critical deadline.

**OP FALCONER – CLARIFICATION OF AUSTRALIAN INVOLVEMENT WITH
IRAQI PRISONERS OF WAR**

RECOMMENDATIONS

1. That you note that:
 - a. the approximately 45 Iraqi prisoners of war were transported by the Australian landing craft attached to HMAS KANIMBLA and not housed on HMAS KANIMBLA as previously advised; and
 - b. a third incident involving HMAS KANIMBLA occurred on 21 Mar 03.

OVERVIEW

2. On 7 May 04, I wrote to provide confirmation of Australia's involvement with Iraqi prisoner's of war (MINSUB 306986 refers) which was based on information previously provided to this headquarters and subsequently to you. This information has now proved to be misleading. Following recent discussions with the Commanding Officer of HMAS KANIMBLA (at the time), I must now correct an error of fact associated with one of the incidents that occurred on 21 Mar 03 and apprise you of a third incident involving the Royal Australian Navy that also occurred on 21 Mar 03.
3. The 45 Iraqi prisoners of war were not housed temporarily on HMAS KANIMBLA as previously advised. They were, however, placed on board the Australian landing craft (LCM8) that was attached to KANIMBLA, for transfer to USS DUBUQUE. These prisoners remained in the custody of US forces at all times while on board the LCM8.
4. A third incident occurred on 21 Mar 03, also involving HMAS KANIMBLA. Following discovery of weapons and Iraqi military uniforms on board two Iraqi tugs, six personnel were transferred to HMAS KANIMBLA via the Australian LCM8. These six personnel and the three prisoners of war from the Iraqi patrol boat were on board KANIMBLA for approximately eight hours before being transferred to USS DUBUQUE. The US was the detaining power for all nine prisoners on board KANIMBLA.
5. I reported at the 22 Mar 03 media brief that "HMAS KANIMBLA currently has on board a small number of Iraqi prisoners of war – at one point it reached about 50 – picked up from a sunken Iraqi vessel." Only nine prisoners of war were on board KANIMBLA and only three of those were from the sunken Iraqi patrol boat. The remainder was on board KANIMBLA's LCM8.
6. While Australia did assist coalition partners in the management of enemy prisoners of war, Australian forces did not capture prisoners during the war in Iraq. The US retained its obligations as the detaining power whilst the prisoners were on board KANIMBLA.

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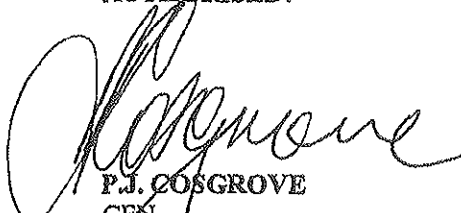
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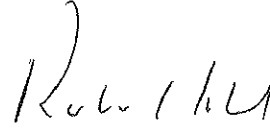
Sensitivity. Yes; instances of inappropriate treatment of Iraqi prisoners of war and detainees by Coalition forces is receiving extensive global media coverage, and is the subject of Defence inquiries in both the US and UK.

Talking Points: An updated Question Time Brief 6.16 is attached.

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Attachment:

1. Question Time Brief 6.16 – Iraq Prisoners of War and Detainees

IRAQ: PRISONERS OF WAR AND DETAINEES

POSSIBLE QUESTION: How did Australian forces handle captives during the conflict in Iraq?

TALKING POINTS:

- 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.
- Australian forces did not capture or hold any captives.

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.
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- Australian forces were involved in assisting coalition partners in *four* 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*. ~~These prisoners remained in custody of US forces at all times. while they were aboard the KANIMBLA.~~
- The *fourth* 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
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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 ~~FALCONER~~/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.

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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.

Arrangements for OP FALCONER

Coalition arrangements were put in place to facilitate handling and treatment of prisoners of war and civilian detainees. Australia's legal obligations were duly considered by Government and the ADF and were reflected in those arrangements.

The terms of the arrangements honour Australia's obligations under the Geneva Conventions and customary international law.

During the course of OP FALCONER, no captives were formally transferred by Australia under those arrangements. The incidents involving the transfer of prisoners to HMAS KANIMBLA and USS DUBUQUE on 21 Mar 03, occurred prior to the conclusion of the trilateral transfer arrangement. In any event, as Australia did not detain the prisoners of war, the arrangement would not have applied as was the case with the AS Special Forces incident on 11 Apr 03.

AS Special Forces Incident

On 11 April 2003, Australian special force elements, together with coalition forces, provided security for a member of the US forces in the capture of approximately 60 Iraqi personnel who were travelling along the Main Supply Route out of Iraq. The captured personnel were carrying a large sum of money, around USD \$600 000. These men were taken into US custody.

Any inference drawn from Defence statements that Australia was formally the "capturing nation" for these personnel is incorrect. The US was the formal Detaining Power for the purposes of the Geneva Convention.

HMAS KANIMBLA incident

The prisoners of war that were carried on HMAS KANIMBLA following incidents on 21 Mar 03 remained in US custody, and did not become an Australian responsibility.

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

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were responsible for holding prisoners that you would be very confident that they would behave appropriately.

There been no instances since the conflict concluded of Australian personnel deployed on Operation CATALYST being involved in the interrogation or incarceration of Iraqis. Australian members of the ISG are only involved in meetings with Iraqis freely cooperating with the ISG. They do, however, contribute to the development of questions put to detainees as part of the search for Iraqi WMD.

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