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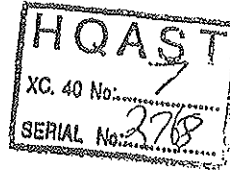


AUSTRALIAN DEFENCE HEADQUARTERS
Strategic Operations Division
MINUTE

CDI:	
Ref:	m2616
Signal:	6046
Folio:	7 of 9

DEPSEC S/OUT/2004/183

Minister for Defence



2003/SDD0157
19 MAY 2004
CQ92091

For Action By: Immediate for situational awareness.

OP CATALYST - ARRANGEMENTS FOR THE TRANSFER OF ENEMY PRISONERS OF WAR

RECOMMENDATION

1. That you note arrangements for the handling and transfer of Enemy Prisoners of War (EPW) agreed between Australia, the US and the UK.

OVERVIEW

2. On 10 May 04, your staff requested a brief on the documents/agreements/MOUs regarding the capture, handling and transfer of EPWs in the MEAO. Information was also requested regarding what arrangements were in place prior to the conflict and what occurred when EPWs were taken/transferred/transported by Australian forces.

3. The primary international conventions for the handling and treatment of EPWs and detainees are the 1949 'Geneva Convention Relative to the Treatment of Prisoners of War' (GC III) and the 'Geneva Convention Relative to the Treatment of Civilian Persons in Time of War' (GC IV). Australia is also a party to the 1977 Additional Protocol I to the Geneva Conventions, which contains additional obligations in relation to the treatment of EPWs and detainees. All signatories to these conventions are obligated to ensure all EPWs and detainees are treated in accordance with the conventions and protocols they have ratified.

4. The US has not signed Additional Protocol I to the Geneva Conventions. This created a potential problem for the coalition in that EPWs transferred between different national handling/holding facilities would be subject to different protocols. The Geneva Conventions place the onus for upholding the rights of a prisoner of war with the Detaining Power. Therefore each Detaining Power is required to ensure every person they have detained is treated in accordance with their obligations under the Geneva Conventions and protocols.

5. In order to allow these principles to be enforced, a tripartite arrangement was developed that allowed for the detention of any detainees by any of the coalition partners. The relevant document regarding the handling of EPWs is titled "AN ARRANGEMENT FOR THE TRANSFER OF PRISONERS OF WAR, CIVILIAN INTERNEES, AND CIVILIAN DETAINEES BETWEEN THE FORCES OF THE UNITED STATES OF AMERICA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND AUSTRALIA". This document was signed on 23 Mar 03 and is at attachment 1. Advice was provided to Government at attachments 2 and 3.

6. The arrangement formalises the transfer of any Enemy Prisoners of War, civilian internee or detainee from a Detaining Power to an Accepting Power, but does not relieve the Detaining Power of its responsibility to ensure the EPWs (or detainee's) rights under the Geneva Conventions, Additional Protocols and International Law are upheld. It formalises

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accordance with their obligations. Without this agreement each of the coalition partners would have needed their own holding and detention facilities.

7. Prior to the signing of this document, there were no formal arrangements between the coalition partners dealing with the transfer of EPWs or detainees. Each state was operating in accordance with the Geneva Conventions and its own legal obligations.

8. There were four instances involving Australian forces in the capture/transfer/transportation of EPWs during the Iraq War in 2003. In no instance did Australia become the Detaining Power nor an Accepting Power. US forces on the scene became the Detaining Power in each instance and the role of Australian forces was limited to assisting US forces in the detention or transportation of EPWs or detainees.

Sensitivity. Yes. The treatment of prisoners is topical and is attracting significant media attention.

AUTHORISED:

NOTED

SECTION 41

Robert Hill

\\ May 04

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SECTION 41

Copies: CDF, SEC, CJOPS, CN, CA, CAF, DCJOPS, DEPSEC S, DGPAOP, FASMSPA

AN ARRANGEMENT FOR THE TRANSFER OF PRISONERS OF WAR,
CIVILIAN INTERNEES, AND CIVILIAN DETAINEES BETWEEN THE
FORCES OF THE UNITED STATES OF AMERICA, THE UNITED
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND
AUSTRALIA.

This arrangement establishes procedures in the event of the transfer from the custody of either the US, UK, or Australia forces to the custody of any of the other parties, any Prisoners of War, Civilian Internees, and Civilian Detainees taken during operations against Iraq. The Parties undertake as follows:

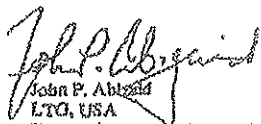
1. This arrangement will be implemented in accordance with the Geneva Convention Relative to the Treatment of Prisoners of War and the Geneva Convention Relative to the Protection of Civilian Persons in Times of War, as well as customary international law.
2. US, UK, and Australia forces will, as mutually determined, accept (as Accepting Powers) prisoners of war, civilian internees, and civilian detainees who have fallen into the power of any of the other parties (the Detaining Power), and will be responsible for maintaining and safeguarding all such individuals whose custody has been transferred to them. Transfer of prisoners of war, civilian internees, and civilian detainees between Accepting Powers may take place as mutually determined by both the Accepting Power and the Detaining Power.
3. Arrangements to transfer prisoners of war, civilian internees, and civilian detainees who are casualties will be expedited, in order that they may be treated according to their medical priority. All such transfers will be administered and recorded within the systems established under this arrangement for the transfer of prisoners of war, civilian internees, and civilian detainees.
4. Any prisoners of war, civilian internees, and civilian detainees transferred by a Detaining Power will be returned by the Accepting Power to the Detaining Power without delay upon request by the Detaining Power.
5. The release or repatriation or removal to territories outside Iraq of transferred prisoners of war, civilian internees, and civilian detainees will only be made upon the mutual arrangement of the Detaining Power and the Accepting Power.
6. The Detaining Power will retain full rights of access to any prisoners of war, civilian internees, and civilian detainees transferred from Detaining Power custody while such persons are in the custody of the Accepting Power.
7. The Accepting Power will be responsible for the accurate accountability of all prisoners of war, civilian internees, and civilian detainees transferred to it. Such records will be available for inspection by the Detaining Power upon request. If prisoners of war, civilian internees, or civilian detainees are

returned to the Detaining Power, the records (or a true copy of the same) relating to those prisoners of war, civilian internees, and civilian detainees will also be handed over.

8. The Detaining Power will assign liaison officers to Accepting Powers in order to facilitate the implementation of this arrangement.
9. The Detaining Power will be solely responsible for the classification under Articles 4 and 5 of the Geneva Conventions Relative to the Treatment of Prisoners of War of potential prisoners of war captured by its forces. Prior to such a determination being made, such detainees will be treated as prisoners of war and afforded all the rights and protections of the Convention even if transferred to the custody of an Accepting Power.
10. Where there is doubt as to which party is the Detaining Power, all Parties will be jointly responsible for and have full access to all persons detained (and any records concerning their treatment) until the Detaining Power has by mutual arrangement been determined.
11. To the extent that jurisdiction may be exercised for criminal offences, to include pre-capture offences, allegedly committed by prisoners of war, civilian internees, and civilian detainees prior to a transfer to an Accepting Power, primary jurisdiction will initially rest with the Detaining Power. Detaining Powers will give favourable consideration to any request by an Accepting Power to waive jurisdiction.
12. Primary jurisdiction over breaches of disciplinary regulations and judicial offences allegedly committed by prisoners of war, civilian internees, and civilian detainees after transfer to an Accepting Power will rest with the Accepting Power.
13. The Detaining Power will reimburse the Accepting Power for the costs involved in maintaining prisoners of war, civilian internees, and civilian detainees transferred pursuant to this arrangement.
14. At the request of one of the Parties, the Parties will consult on the implementation of this arrangement.

Done at Camp Al Raythiyah, Doha, Qatar on this 21st day of March 2003.

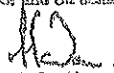
For the United States of America


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