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CDR
BOOK... 11
SERIAL No... 2751

B269859

13 MAY 2003
CDF/M/2003
Reg No. 12/5

BRIEF FOR CDR

OP FALCONER - ADF HANDLING OF PRISONERS OF WAR AND DETAINEES -
MEDIA STATEMENTS

Purpose

- c This brief:
 - discusses an apparent inconsistency between Defence media statements and the practice adopted by the AS SF in relation to an incident on 11 Apr 03.
 - comments on the presence of IZ PWs on board HMAS KANIMBLA.
 - provides a draft Question Time Brief covering PW/detainee issues for approval (H50 to sign).

Introduction

- c During OP FALCONER, two incidents involving the ADF's handling of captives have been highlighted in Defence media statements. The first incident involved the presence of PWs on HMAS KANIMBLA on 21 Mar 03. The second on 11 Apr 03 involved the AS SF and 66 captives taken in western IZ.
- c The later incident involving the AS SF now causes some concern. Defence media statements have been interpreted by the media as a claim that the AS SF was the capturing force in relation to the detainees concerned. However, the particular policy adopted at the tactical level indicates that the US, not AS, formally fulfilled this role for the purpose of the Geneva Conventions or, more technically, was the responsible "Detaining Power".
- c This brief explains the nature and consequences of a possible inconsistency between the media perception and the formal position adopted by the AS SF. The concern for Defence is that the media may feel misled, and suggestions may emerge that AS has not fulfilled its legal obligations.
- c In this context it is noted that 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 (Flag A). The media statement in part demanded that the government declare what conditions 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. Both the specific incidents involving HMAS KANIMBLA and the AS SF were specifically mentioned in the press release.

Background

- c For OP FALCONER, the ADF's planning approach to captives in IZ, centred upon the conclusion in-theatre on 23 Mar 03 of a trilateral (AS/UK/US) transfer arrangement providing for the transfer of PWs, civilian internees and civilian detainees between

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"Detaining Powers" and "Accepting Powers" (Flag B). The trilateral transfer arrangement was critical to AS because it did not have an in-theatre detainee handling capability.

- e. The trilateral transfer arrangements for OP FALCONER were designed to ensure strict compliance with the terms of Geneva Conventions III and IV. In this context, key provisions within the trilateral arrangement include:

- an undertaking to apply the arrangement IAW with Geneva Conventions III and IV.
- Accepting Powers are required to hand back captives upon request by the Detaining Power; and
- the Detaining Power rather than the Accepting Power remains solely responsible for determining the status of captive.

- e. The conclusion of the trilateral arrangement, overcame the problem which arose during OP SLIPPER whereby the § 33 (1)(e) III; precluded the transfer of any detainees from AS to US forces. In order to avoid formally transferring any captives to the US, for OP SLIPPER AS developed a two-limbed approach:

- During operations where US and AS forces were working closely together, US military personnel attached to the AS forces formally effected capture on behalf of the US. The AS position was that ADF elements merely "assisted" in the capture of personnel and a captive was never considered to be formally detained by AS. The arrangement was not subject to public scrutiny.

➤ AGs advice at the time indicated that

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- The ADF placed on stand-by a detainee handling capability that would deploy to hold those captives who were clearly taken and held independently by the AS forces. It was not necessary to actually deploy this capability during OP SLIPPER.

Incident Involving the Special Forces

- e. On 11 April 2003, AS SF elements participated in the capture of 59 suspected Fedayeen personnel, four Iranians and three suspected Ba'ath Party members who were travelling on a bus and two cars along the Main Supply Route out of Iraq. The media has reported the incident as involving 59 personnel and the bus only, which is consistent with Defence statements on the matter. These men were stopped, detained and handed on to other coalition forces. Indicative examples of Defence media statements and reporting on this incident are attached at Annex A.
- e. Public Perception. On the basis of Defence media statements it would be reasonable for the public to conclude that AS claimed responsibility for the capture of these personnel. Informed observers may also believe that by claiming responsibility, AS acted as the responsible Detaining Power under the Geneva Conventions and therefore incurred a range of legal responsibilities.

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- Consequences of being the Detaining Power. If AS was the responsible Detaining Power then:
 - AS' international legal obligations relating to the transfer of captives under the Geneva Conventions would be engaged, as would the trilateral arrangement between Coalition partners regarding such transfers.
 - The status of captives as 'prisoners of war' would be determined by AS either before or after transfer (under the trilateral arrangement).
 - AS would be obliged to have collected, retained and transmitted the personal details of the captives to the International Committee of the Red Cross through the AS National Information Bureau (established within DFAT).
 - Should AS become aware that the state accepting any transfer of captives is failing to carry out the provisions of the relevant Geneva Convention, then AS would be required to take effective measures to correct the situation or shall request the return of the captive. Such requests must be complied with.
- Actual policy applied by AS SF. It is now clear from the answer to SOD RFI 77 (Flag C) that the AS SF element did not approach this issue from the perspective of AS being or becoming the responsible Detaining Power. Notwithstanding the existence of the trilateral arrangement, the AS SF adopted the policy employed in AFG during OP SLIPPER. In the answer to SOD RFI 77 it is stated that "the attached American STS member accepted detention of the 59 personnel." The captives were then handed to UK forces for transportation purposes. The answers to SOD RFI 77 are consistent with the CTG 633.3 OP FALCONER INCIDENT REPORT 022 dated 120530Z APR 03 (Flag D).
- Comments on the AS SF Actions.
 - The approach adopted by the AS SF ascribes the role of Detaining Power to the US not AS and, in effect, asserts that the captives were never formally in the hands of AS so no formal transfer to the US forces took place. On this analysis, the trilateral arrangement was not required.
 - While personal details of the captives were taken by the AS SF in relation to ownership of equipment and passed to the UK forces, no personal details were kept by the AS SF. Consequently, AS has no visibility of any further processing or the location of the captured personnel at this stage. Moreover, AS has not provided the ICRC with the personal details that would be required if AS was the responsible Detaining Power.
 - AS has not assessed the status of any of the captured personnel, nor is it known what status has been given to these captives by either the US or UK.
- Analysis
 - It is possible to reconcile at least the most prominent Defence media statements (rather than the media reports) with the AS SF policy. Defence media statements did refer to handing captives over to Coalition forces, but no mention has been made of the presence at capture of US forces. Defence officials have avoided definitively claiming that the AS SF were the sole capturing force, and have not asserted that AS

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- was acting as the responsible Detaining Power under the Geneva Conventions (nor used words to that effect). However, Defence still appears to be in an undesirable position in the context of possible Parliamentary and media questions.
 - Defence may find it difficult, although not impossible, to coherently explain that AS was not the Detaining Power, without this being portrayed as an admission that AS had claimed responsibility for something that it did not do.
 - On the other hand, if the public believes that AS captured these personnel, then informed observers may suggest that AS has claimed responsibility for capturing these personnel, but has failed to take the steps that would legally flow from being the Detaining Power.
- The number of captives involved places pressure on the credibility (visually, if not legally) of asserting that the sole US member attached to the AS SF element, formally effected the detention. However, a sustainable case can be made that the US was the responsible Detaining Power using the policy from OP SLIPPER. In support of this conclusion, the answer to SOD RFI 77 indicates that:
 - the US military member was physically present at the point of capture, he "accepted detention" and was involved in the hand over to the UK transport element.
 - US members attached to the AS SF are merely TACON to the AS SF element, and retained their own national command chain.
 - The measures of physical control imposed by the ADF members were "limited to an armed presence" and the persuasive efforts of a linguist.
- This view may be contested by some commentators who may consider AS to be the responsible Detaining Power. Some commentators may also assert that there is a joint responsibility because it too difficult to determine who is the capturing nation. These are the same criticisms that could have been raised in relation to OP SLIPPER.
- These criticisms can be dealt with readily, since the Coalition forces present at the incident site made a specific determination as to which nation was to be the responsible Detaining Power (the US). It was open to the forces represented (acting as agents of their respective governments) to remove any doubt as to which nation was the responsible Detaining Power.
- In addition, the action taken by the AS SF and their Coalition partners was consistent with the requirements under international law to provide for the immediate safety of the captives (through the use of Coalition air assets); as well as the practical requirement to provide for their own security, operate within their own capabilities, and maintain availability for further tasking.
- * Management. The recommended way ahead is to follow through on the approach taken by AS SF in the field. This is reflected in the draft Question Time Brief (QTB) attached to this brief (Flag E), and involves the following:

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- highlighting the AS SF's critical role in the incident but acknowledging that there was also Coalition involvement; and
- indicating that it was appropriate that AS' Coalition partners should immediately take custody of the captives and be responsible for further processing.

Incident Involving HMAS KANIMBLA

- o As a result of two incidents on 21 Mar 03, up to ⁵⁰ captured IZ personnel were present on HMAS KANIMBLA. In-theatre reporting stressed that US personnel retained control of the captives, and that there was no claim that the personnel had been captured by AS personnel. The presence of any captives on board an AS warship could raise questions of AS custody, if only because the commander of the vessel has full authority over every part of the vessel. However, it is considered that this peripheral but necessary role of HMAS KANIMBLA should not lead to a conclusion that AS assumed responsibility for these captives as a Detaining Power or power to which they were transferred.
- o The Defence media statements by CDF did not address the issue of which nation was the captor of the personnel aboard HMAS KANIMBLA.
- o It is noted that these captives came aboard HMAS KANIMBLA and its LCM8 in the period before the trilateral arrangement was signed. However, it is not considered that this alters the position expressed above.
- o The draft QTB attached to this brief covers this specific issue.

Draft Question Time Brief

- o The suggested response in the QTB, includes the Minister indicating that Defence will check with Coalition partners to see whether they have any objections to the public release of the trilateral arrangement (which is unclassified). The document represents compelling evidence that GOAS took its responsibilities seriously with respect to captives.

Recommendation

- o That you approve (for HSO signature) the attached QTB


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12 May 03

Annex:

Defence media statements/reporting on the Special Forces incident

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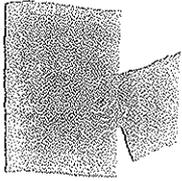
Attachments:

- A. 23 April 2003 Media Statement by the Shadow Minister for Defence
- B. Trilateral AS/US/UK Transfer Arrangement
- C. Answer to SOD RFI 77
- D. CTG 633.3 OP FALCONER Incident Report 022 dated 120530Z APR 03
- E. Draft QTB

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ANNEX A TO
B269859
DATED MAY 03

DEFENCE MEDIA STATEMENTS/REPORTING
ON THE SPECIAL FORCES INCIDENT

c Indicative Public statements:

- CDF at daily media briefing 15 Apr 03

"[L]ast week, Friday ... our Special Forces interdicted a bus carrying a large group of males attempting to leave the country. The bus was interdicted or intercepted on a road heading west out of the country. There were 59 men on the bus when it was intercepted by our troops and they were carrying a large sum of money, around \$600 000 US, and documents including a letter which advised more money would be paid if Americans were killed. These men and all their possessions were taken into custody and handed on to other coalition forces. They are now being processed to determine their status."

- LTCOL Mark Elliott, doorstep 14 Apr 03, Qatar

"Brigadier McNam mentioned yesterday an incident last Friday afternoon involving our Special Forces ... Those men and all their possessions were taken into custody by the coalition, and are obviously being processed by the Coalition processes. I just want to provide the detail that the Special Forces involved in that were actually our Australian SAS and they were the ones that conducted that."

- COL John Mansell, 9 May 2003, Canberra

"About a week into the campaign the area quietened down and the SAS became more and more involved in highway interdiction tasks. Basically the task here was to deny enemy escape routes of high value targets, but also at the same time to deny foreign regime supporters from moving in to Baghdad. So you can effectively see we've got people moving from both sides of these potential checkpoints.

Therefore it wasn't without its risks, and particularly given the suicide bomber threat and the SAS needed to approach it with a very cautious and thorough manner. They had to constantly change their locations and methods so as not to set a pattern. Clearly if you set a pattern this gives the opposition the opportunity to prepare themselves with some sort of suicide bomb capability.

The experienced success on a number of occasions culminated in the capture of a significant number of likely Feda'ayan and Ba'ath Party members, along with considerable amount of cash as they tried to exit the country. They also apprehended convoys carrying communications equipment's and gasmasks. ...

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QUESTION: I was just going to ask you about the numbers - not the numbers of dead or anything - but the numbers of people who were arrested or detained by our people? I know that the big group with all the money, that one incident. But how many overall were detained by our people?

COLONEL MANSELL: Once again, it's similar to the casualty count. If you focus on the numbers of people you were detaining, you're going to lose focus on the main game. And whilst we did detain folks, they were quickly handed over to coalition authorities.

If we detain folks for a long period of time, we're going to be distracted. We just didn't have the numbers out there to look after detainees and prisoners of war. It was a matter of letting them go or handing them over to coalition authorities."

o Indicative Media Reporting

- The Age,

"SAS snatches 60 top Iraqis ... Australian SAS troops have captured nearly 60 senior Iraqi officers, political leaders and foreign mercenaries fleeing Baghdad in a convoy carrying more than US\$600,000 ... Their 59 middle-aged occupants have been handed to the US and are being interrogated at a prison camp in western Iraq. Australian forces commander Brigadier Maurie McNam yesterday confirmed that the SAS had halted the convoy on Friday. ... 'They tried to make a run through an area the Australians were dominating,' he said."

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What Is Austria Doing With Iraqi Prisoners Of War?

[Chris Evans - Shadow Minister for Defence](#)

Media Statement - 23 April 2003

The Government must declare what conditions it has imposed on the handing over of prisoners of war (POWs) captured by Australian forces to the United States.

Australia has legal obligations to treat a larger class of Iraqi captives as POWs than the US, and must extend all rights of POWs to all Iraqis detained by the ADF during the war.

This is because Australia is a party to Additional Protocol One to the Geneva Conventions. While the United Kingdom is also a party, the United States is not.

This means while the US is at liberty to label militia groups in Iraq such as the Fedayeen 'unlawful combatants', and deny them the rights of POWs, Australia is not.

Australia has legal obligations under the Additional Protocol to give POW status to all Iraqis fought and captured in the war, not just those who were officially employed in Saddam's defence forces.

Australian Force Commander Brigadier McNam confirmed recently that the SAS had successfully captured nearly 60 senior Iraq officials fleeing Baghdad.

About a month ago a similar number of Iraqi POWs were conveyed on the HMAS Kanimbla to a detention facility, presumably run by the United States.

This means that there are over 100 Iraqis detained at some stage by Australian forces, all of whom are POWs.

One of the benefits of being a POW rather than an 'unlawful combatant' is that a POW cannot be

Related Material

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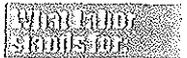
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prosecuted for participating in hostilities.

Under the Geneva Conventions, a POW can only be prosecuted for war crimes. He or she cannot be prosecuted for simply defending their country.

The Howard Government must come clean about the terms on which Australia handed over persons captured or detained by Australia, to rule out the sending of these people to Guantanamo Bay.

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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 Australian 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:

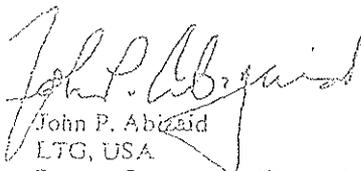
1. This arrangement will be implemented in accordance with the Geneva Convention Relative to the Treatment of Prisoners of War and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as well as customary international law.
2. US, UK, and Australian forces will, as mutually 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. Transfers 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 Powers 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 Convention 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 offenses, to include pre-capture offenses, 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 favorable consideration to any request by an Accepting Power to waive jurisdiction.
12. Primary jurisdiction over breaches of disciplinary regulations and judicial offenses 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 As Sayliyah, Doha, Qatar on this 25th day of March 2003.

For the United States of America



John P. Abizaid
LTG, USA
Deputy Commander Forward
United States Central Command

For the United Kingdom of Great Britain
And Northern Ireland



B.K. Borridge
Air Marshal
United Kingdom National Contingent
Commander

For and on behalf of Australia



M. R. McNam

Brigadier

Commander Australian National Headquarters

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TE 633.3 RESPONSE TO
STRATEGIC OPERATIONS DIVISION
REQUEST FOR INFORMATION

Subject: Iraqi POWs

SOD Reference: B268176

SOD RFI Reference Number: 77

Responsible Agency: ASNHQ

DTG required: ASAP

Sponsor: HSO

DTG Tasked: 240237Z Apr 03

Information requested:

1. What role did ADF personnel play in the capture, detention/custody and hand-over of the 59 captives? What measures of physical control were involved in any of these activities?

In the conduct of the allocated C-TBM mission, the TE denied movement through the rapid conduct of VCP on main traffic routes. During a VCP on 11 Apr 03 several persons of interest were discovered. At this time the attached American STS member accepted detention of the 59 personnel. The ADF personnel provided security for the detention and hand over of the 59 captives to the UK personnel who arrived by helicopter to transport them to an EPW facility at H1.

The measures of physical control of the captives were limited to an armed presence by some TF members and the use of a linguist to contain the group initially on the side of the road and subsequently in their vehicles. The detainees were restrained by UK extraction force using wrist cuffs in preparation for transportation.

2. What role did the US personnel attached to TE 633.3.1.1 play in the capture, detention/custody and hand over of the 59 captives? What measures of physical control were involved in any of these activities?

The US personnel were involved in handing over the personnel detained to the UK personnel tasked to pick them up.

The role played in the capture by US personnel and measures of physical control involved in the conduct of these activities were the same as described in Question 1.

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3. Was it made clear to the captives that they were in US detention or custody and that the US would be responsible for them?

No, there was no requirement within the ROE or MOU to make any such information known to the detainees.

4. What is the exact command and control arrangement between the ADF and US personnel involved in this incident and for the purposes of handling captives?

TU 633.3.1 is TACON to CJSOTF-W, and in turn OPCON to CFSOCC. The Special Tactics Squadron personnel are TACON to CTU 633.3.1 for the conduct of CAS coordination. For the capture of any pers this TACON status is not relevant. They are TACON for the purposes of their STS capability, but for all intents and purposes as an American they have the same National Command responsibilities as we have. He effected the detention on behalf of the US during a combined operation.

5. How many US personnel were attached to this particular ADF SF TE at the time of the incident?

There were four US Special Tactics Squadron (STS) personnel attached to TU 633.3.1. There was one STS personnel at the snap VCP.

6. How was transport of these personnel arranged and effected?

After TU 633.3.1 informed CJSOTF-W of names and passport details, CJSOTF-W directed the continued holding of the stopped personnel until they were handed over. CJSOTF-W tasked UK CH47 assets located at HI to effect the pick-up of personnel from where they were located with TU 633.3.1. This task was completed by 112330Z Apr 03.

7. Were the personal details of the 59 captives recorded by the ADF at any stage of this incident? If those details were not recorded by the ADF, is it possible to obtain those details from the US or UK forces? Was any other processing activities conducted by ADF elements?

Personal details were recorded in relation to ownership of equipment. All documentation was subsequently passed to the UK personnel and not retained by HQ TU 633.3.1. It was not logistically possible within the TE's resources, nor tactically appropriate to retain copies of any documentation.

It is not possible at the tactical level for TU 633.3.1 to obtain any further information on these detainees.

Processing activities conducted by the TU were initial questioning, searching and feeding. All captives were medically checked by the TU medics prior to hand over to UK personnel by the STS member. Only two pers had the minor ailments of sore feet and a cold.

8. Where are these 59 captives now and under whose control are they? Has the status of

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these personnel, as PWs or otherwise, been determined and if so by what method and by who?

It is not known where the detained personnel are now. The personnel stopped were handed over to the UK extraction FE and UK aircrew for transit to an EPW handling facility at HI.

9. Has the US or UK acknowledged responsibility for any or all of these personnel from the beginning of captivity?

The UK and US have not formally acknowledged responsibility to TU 633.3.1, although there is no reason to expect they would. The act of loading the detainees onto the UK aircraft implies acceptance on their part from the US detaining personnel.

10. Has the use of US personnel within or attached to ADF SF TEs to effect detention/custody (as opposed to using ADF personnel) been a standard or common practice during ops in IZ and, if so, was this a promulgated policy?

Yes it is a standard practice, however, this is the only instance during OP FALCONER where TU 633.3.1 elms have been present when personnel have been detained by Coalition Forces. This practice reflects the issued and CDF/HQAST endorsed PW capture policy for the earlier OP SLIPPER.

11. During OP FALCONER, how many PWs or civilian detainees having been handled using this method?

This is the only instance during OP FALCONER where TU 633.3.1 elms have been present when personnel have been detained by Coalition Forces.

Context: On 11 Apr 03, TE 6333.3.1.1. participated in the capture of 59 personnel on a bus driving on the MSR. This incident received considerable media publicity at the time. The incident has now been raised by a member of the opposition by way of a press release (see attached). In order to consolidate the information available to senior Defence leadership and GOAS for the purposes of managing any response to this press release, the above information is required. Despite the conversation between AIRCDRE Shepherd and BRIG Hindmarsh last night at 1800L Apr 03, this additional detail is required.

Contact Details: SOD OPS (02) 6265 5000

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Answer:

Answers above.

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COMAST

= Commander Ashwaia
Threatre.

DECLASS
SECRET AS/UK/

MA AST

= Headquarters Australian
Threatre.

OP FALCONER INCIDENT REP

Z = Zulu time, 'Greenwich
mean time'

ACTION:
COMAST
ASNCOMB-MEAO
INFO:
HQ AST
SOCC AST
ASNHQ-MEAO
TO 633.3.1
ASTJIC

SUBJ: CTG 633.3 OP FALCONER INCIDENT REPORT 022 DATED 120530Z
APR 03

1 BRIEF DESCRIPTION OF INCIDENT.

A. TE 633.3.1.1 DETAINED A NUMBER OF SUSPECT PERSONNEL ON THE
MSR AND, THROUGH CJSOTF-W, FACILITATED THEIR MOVE TO TF
SEMINOLE AT H1 UNDER CONTROL OF UK FORCES.

B. TE 633.3.1.1.2 WHILST CONDUCTING SNAP VCPS ON MSR WITHIN
EXTENDED SOA 2, STOPPED AND DETAINED A NUMBER OF SUSPECT
PERS AT APPROX 111300Z APR 03 HEADING WEST FM AR RAMADI.

C. 59 SUSPECTED FEDAYEEN PERS WERE DETAINED ALONG WITH 4
IRANIANS AND 3 SUSPECTED BAAATH PARTY MBRS. SUSPECTS WERE
DRIVING A BUS AND TWO CARS WHEN STOPPED. SUSPECTS WERE
DETAINED ON ADVICE FROM A SHEIK [] WHO
APPROACHED VCP.

D. SHEIK HAD PID 5 PERS IN LOC AS FEDAYEEN, AND 3 PERS AS BAAATH
PARTY OFFICIALS WITH ONE POSSIBLY A RANK OF COL. SHEIK ALSO
PROVIDED B TP WITH A LETTER FROM ALL 8 SHEIKS FM AR ARAMADI.
LETTER IS PRO-US AND STATES THAT COALITION FORCES SHOULD
COME TO AR AMARDI.

E. IRANIAN PERS DETAINED WERE CARRYING \$500,000 US AND OTHER
CURRENCY AND A LETTER STATING THAT THEY WILL RECEIVE \$5000
US IF MORE AMERICANS ARE KILLED.

F. ALL PERS WERE DETAINED AND HANDED OVER TO UK FORCES FOR
TF BY UK CH47 TO H1 FOR FURTHER PROCESSING. THIS EXCHANGE
WAS COMPLETED BY 112350Z WITH THE US STS ATTACHED TO TF 64
EFFECTING THE DETENTION AND THEN HANDING OVER TO UK ELMS
FOR TRANSFER TO THE US PW FACY AT H1.

G. UNIT INVOLVED, TE 633.3.1.1.

H. DTG OF INCIDENT, 111300Z APR 03

I. LOCATION OF INCIDENT, N 33DEG16 . 92 E 42DEG26 . 255.

J. NATURE OF INCIDENT, MSR INTERDICTION.

K. DETAILS OF AS PERS: TE 633.3.1.1.

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3. FRIENDLY CASUALTIES:
 - A. KIA: NIL
 - B. VIA: NIL
 - C. MIA: NIL
4. ENEMY CASUALTIES:
 - A. KIA: NIL
 - B. VIA: NIL
4. CASEVAC DETAILS: N/A
5. DETAILS OF TCR/COALITION FE INVOLVED: UK CH47 AND RM CDO ESCORT PARTY.
6. STATUS OF AS PLATFORM OR EQUIP: N/A
7. FUTURE ACTION TO BE CONDUCTED: CONTINUE OPS IAW SOM.
8. COMMANDERS ASSESSMENT/COMMENTS: INCIDENT IS INDICATIVE OF THE EXODUS OF SUSPECT PERS FROM BAGHDAD AND WHO REPRESENT GOOD INTELLIGENCE VALUE. DETENTION WAS EFFECTED BY US STS MBR AND HANDOVER OF PERS AND EFFECTS WAS COMPLETED IAW POLICY REQUIREMENTS. FULL REPORTING WILL NOT BE AVAL UNTIL TROOP WDR FROM FD. FE WILL FOLLOW UP INFO FROM SHEIK WITH FURTHER MEETINGS TODAY.
9. POC TG 633.3 W/K.
10. ACK. N/A

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PRISONERS OF WAR AND DETAINEES HANDLING IN IRAQ

POSSIBLE QUESTION: How have Australian forces handled captives during the conflict in Iraq?

TALKING POINTS:

- Australian forces treat all captives humanely and in compliance with the laws of armed conflict. Australian personnel receive training in these matters 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 and its Coalition partners concluded a trilateral arrangement, signed by relevant US, UK and Australian commanders, allowing for the formal transfer of prisoners of war, civilian detainees and internees. The terms of the arrangement protected Australia's position with respect to the Geneva Conventions that mutually applied between the parties. The key features of the arrangement are:
 - it allows the officials of the transferring state full rights of access to the transferred captives;
 - it includes provision for return of captives, without delay and upon request by the transferring state; and
 - it provides that the transferring state is responsible for determining the Geneva Convention status of a captive as a prisoner of war.

- With major conflict over we will make inquiries of our Coalition partners as whether they would have any objections to making this trilateral document public.
- During the conflict in Iraq, Australian involvement with both prisoners of war and civilian detainees has been limited because of the nature, size and tasking of the Australian forces deployed.
- Australian forces are not holding any captives.

If Asked: Has Australia handed over captives to its Coalition partners and if so, under what conditions?

- Australian forces were involved in a number of separate incidents where captives were, or had been, taken by the Coalition. Apart from the cases where captives were immediately released, those captives are being held and processed by Australia's Coalition partners.
- 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 has been 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, US and the UK. The primary role of the Australian Special Forces was to stop and secure the vehicles and

to impose Coalition control over the situation, whilst the occupants of the vehicles were assessed.

- The Coalition forces have formally detained the captives, including the important task of transporting the captives to a secure environment.
- The role that each Coalition nation's forces play in these kinds of scenarios will depend 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 are 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?

- Coalition forces present at the incident site formally detained these personnel and have effectively assumed responsibility for them under the Geneva Conventions as the responsible Detaining Power.

If Asked: What has happened to the prisoners of war that were present on HMAS KANIMBLA on 21 March 2003?

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

If Asked: Has Australia reported details of any captives to the International Committee of the Red Cross?

- e No. That would be the responsibility of our Coalition partners who formally detained the captives under the Geneva Conventions.

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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 (attached to this brief). 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 these prisoners under the Geneva Conventions.

Arrangements for OP FALCONER

- An arrangement for the transfer of prisoners of war, civilian internees and civilian detainees during Operation FALCONER was signed in theatre on 23 Mar 03 by force commanders for and on behalf of the US, UK and Australia. This arrangement allows Australia to transfer prisoners of war, civilian internees and civilian detainees to holding facilities operated by our coalition partners. The terms of the arrangement honour Australia's obligations under the Geneva Conventions and customary international law.
- Importantly, the arrangement allowed Australian officials full rights of access to prisoners of war, civilian internees and civilian detainees transferred by Australian forces. The arrangement also included provision for return, without delay and upon request by Australia, of persons previously transferred to coalition partners. Under the arrangement, the Detaining Power was responsible for determining the Geneva Convention status of a prisoner. Therefore, if Australia took a captive during the conflict, that captive's status should have been determined by Australian authorities.
- During the course of OP FALCONER, no captives were formally transferred by Australia under this agreement. The two incidents that were specifically briefed to the media by Defence did not, in all the circumstances, fall within the terms of the trilateral transfer arrangement.

AS Special Forces Incident

- On 11 April 2003 Australian Special Force elements, together with coalition forces, participated in the capture of 66 personnel who were travelling on a bus and in two cars along the Main Supply Route out of Iraq. The media has reported the incident as involving 59 personnel and the bus only, which is consistent with Defence statements on the matter. The captured personnel were carrying a large sum of money, around USD \$ 600 000. These men were taken into custody and handed on to other coalition forces.
- Defence statements on this matter could be taken to mean that Australia was formally the "capturing nation" for these personnel. This could lead to assumptions that AS the responsible Detaining Power for the purposes of the Geneva Convention.
- Notwithstanding the existence of the trilateral arrangement, the AS SF adopted the policy employed in Afghanistan during OP SLIPPER. That is, a US military member attached to the Australian Special Forces was designated at the time as "accepting detention" on behalf of the US. The captives were then handed to UK forces for transportation to a prisoner of war holding facility.

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- Using the policy from OP SLIPPER, a sustainable case can be made that the US became the responsible Detaining Power for the purposes of the Geneva Conventions. However, this approach might be challenged by some commentators.

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.

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May 02

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