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AUSTRALIAN DEFENCE HEADQUARTERS
Chief of the Defence Force

MINUTE

B307545

Minister

For Action By: Immediate, for situational awareness.

OP FALCONER – ADDITIONAL INFORMATION REGARDING AUSTRALIAN INVOLVEMENT WITH IRAQI PRISONERS OF WAR

RECOMMENDATIONS

1. That you note that a second incident involving Australian special forces has been identified.

OVERVIEW

2. On 7 May 04, CDF 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. On 11 May 04, CDF corrected an error of fact regarding incidents involving HMAS KANIMBLA (MINSUB 307449 refers). Re-examination of tactical level reporting has identified a further incident involving Australian special forces.

3. This 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 03.

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.

AUTHORISED:

NOTED

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// May 04

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Copies: SEC, CJOPS, CN, CA, CAF, DEPSEC S, HSO, DCJOPS, FASIP, FASMSPA, DGPAOP, DGTDLs

Attachment:

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

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IRAQ: PRISONERS OF WAR AND DETAINEES

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.

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

TALKING POINTS:

- 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 03.
- 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.
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- 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.

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 incidents on 2 Apr 03 and 11 Apr 03.

AS Special Forces Incidents

On 2 April 2003, six personnel from 4RAR (CDO) Regiment assisted US forces escort six PW from H4 in [S33(1)6] to TALIL Airbase by US C-130 aircraft. Once the PWs had disembarked the 4RAR personnel returned to [S33(1)6].

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 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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