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Chief of the Defence Force

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Minister

For Action By: No critical deadline.

OP FALCONER – CONFIRMATION OF AUSTRALIAN INVOLVEMENT WITH IRAQI PRISONERS OF WAR

RECOMMENDATIONS

1. That you note that:
 - a. Australia is not regarded internationally as having had responsibility, during the combat operations phase in Iraq, for the taking or holding of prisoners of war;
 - b. while Australian forces did not capture any prisoners during the conflict, assistance was provided to coalition partners in three separate instances; and
 - c. there have been no instances of Australian forces deployed on Operation FALCONER/CATALYST being involved in the holding or mistreatment of detainees since the conflict concluded.

OVERVIEW

2. In response to questioning on the ABC's 7:30 Report on 4 May 04 as to whether Australian forces had been involved in any interrogation or incarceration of Iraqis, you stated that Australian forces had not been responsible for holding prisoners.

3. ~~No prisoners were captured by Australian forces during the war in Iraq.~~ Australian forces did, however, assist coalition partners in three separate incidents of capture of enemy prisoners of war (MINSUB B262005 refers).

4. Two incidents occurred on 21 Mar 03 and involved the Royal Australian Navy as follows:

- a. As a result of 68 contact mines being discovered on an Iraqi barge and two accompanying tugs, the US captured approximately 45 Iraqi prisoners of war. These prisoners were temporarily housed on HMAS KANIMBLA before being transferred to USS DUBUQUE.
- b. As a result of the sinking of an Iraqi Patrol Boat by a US AC-130 gunship, three Iraqi prisoners of war were temporarily held on HMAS KANIMBLA while they received medical attention.

It should be noted that all prisoners remained in the custody of US forces at all times while aboard KANIMBLA. Therefore, Australia's obligation as a Detaining Power was not engaged. This was reported to the media during the 22 Mar 03 Operation FALCONER media briefing where I stated that HMAS KANIMBLA currently had a small number of Iraqi prisoners of war – at one point approximately 50 - picked up from a sunken Iraqi vessel.

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5. The third incident occurred on 11 Apr 03. Australian special force elements participated in the capture of 59 suspected Fedayeen personnel, four Iranians and three suspected Ba'ath Party members who were travelling in a bus and two cars along the main supply route out of Iraq. These men were stopped at a vehicle checkpoint. A US soldier attached to the Australian element maintained formal responsibility for the capture and custody of the personnel before they were handed to UK personnel for transport to a detention centre. Australia's obligation as a Detaining Power was therefore not engaged.

6. This incident was reported to the media during the 15 Apr 03 media briefing on Australia's contribution to Global Operations. At this briefing, I reported that our special forces had interdicted a bus carrying a large group of males and that these men and all their possessions were taken into custody and handed over to other Coalition Forces.

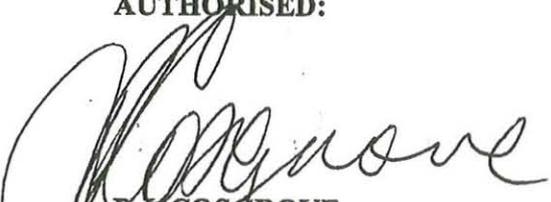
7. Since the end of the conflict, there have been no instances of Australian personnel deployed on Operation FALCONER/CATALYST being involved in the interrogation or incarceration of Iraqis. The Australian Iraq Survey Group (ISG) contingent commander has confirmed that no Australian members of the ISG have been involved in the conduct of interrogations of detainees. Australian members are only present at debriefings or meetings with sources who are offering to cooperate with the ISG. They do, however, contribute to the development of questions put to detainees as part of the search for Iraqi WMD.

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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6 May 04

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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:

- ~~— Australia is not regarded internationally as having had responsibility, during the recent war in Iraq, for the taking or holding of prisoners of war or other captives. Therefore, Australia's international legal obligations as a detaining power, under the third and fourth Geneva Conventions of 1949, were not engaged.~~
- *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.
- ~~— With major conflict over we will make inquiries of our Coalition partners as whether they would have any objections to making these arrangements public.~~
- 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.*
- *Australian forces were involved in assisting coalition partners in three incidents of capture of enemy prisoners of war.*
- *In each incident, Australia was not the Detaining Power and Australia's obligations under the Geneva Convention were not engaged.*
- *The first incident involved the apprehension of three prisoners of war by US forces on 21 March. Those prisoners of war were later transported by HMAS KANIMBLA while they received medical attention. Those prisoners remained in the custody of US forces at all times while they were aboard the KANIMBLA.*
- *The second 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 HMAS KANIMBLA. Those prisoners remained in custody of US forces at all times while they were aboard the KANIMBLA.*
- *The third incident involved the capture of approximately 60 Iraqi prisoners of war on 11 April. Australian 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. (Wa-... ..)*
- *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 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.*

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 two incidents that were specifically briefed to the media by Defence (the two incidents involving the transfer of prisoners to HMAS KANIMBLA were briefed as one) did not 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, 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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