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B262234

BRIEF FOR CDF

OP FALCONER - FILMING AND PHOTOGRAPHING OF PRISONERS OF WAR,
CIVILIAN DETAINEES AND INTERNEES

Purpose

- This brief provides an overview of the law applicable to the filming and photographing of prisoners of war (PWs), civilian detainees and civilian internees and seeks approval to release the attached AMP to the EXECUTO for OP FALCONER.

Overview

- Images of both Iraqi and Coalition PWs have now been displayed in the media.
- Article 13 of Geneva Convention III (GC III) states that PWs must at all times be "protected, particularly against acts of violence or intimidation and against insults and public curiosity". Article 27 of Geneva Convention IV (GC IV) provides the same obligations in relation to civilian detainees/internees.
- These articles of GC III and GC IV were drafted before the advent of television and at the time was directed particularly at many examples from the two World Wars where PWs and civilians were paraded through the streets of local towns in order to subject them to acts of violence or intimidation. The display of PWs has also occurred in more recent times during the Vietnam War where allied pilots were put on display in Hanoi. Also during the First Gulf War, captured Allied pilots were publicly displayed in the streets of Baghdad.
- More recently, the "public curiosity" prohibition has been interpreted to include television broadcasts of PWs. Broadcasts by Iraqi television in which Allied pilots were coerced to denounce their own countries, and also television broadcasts of interviews with Iraqi PWs directly following their capture were deemed violations of the "public curiosity" prohibition. The display of civilian detainees/internees, while receiving less attention, can be considered in the same light.
- Even if such cases were not contemplated during the negotiations for GC III and GC IV in 1949, international law now recognises that the underlying purpose of the rules on humane treatment prohibits the transmission of pictures of PWs and civilian detainees and civilian internees by the Detaining Power (or any other Power who has them temporarily in their control). The only two exceptions to this position are:
 - Photographic/film reports about PWs and civilian detainees/internees do not violate the principle of humane treatment if the photographs/film do not enable the identification of individuals.
 - The other permitted case involves the reporting on PWs and civilian detainees/internees and their conditions of captivity by the Protecting Power or the International Committee of the Red Cross or other internationally recognised body. Although in such cases the PWs are exposed to public curiosity, reporting about

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them serves to enforce international humanitarian law and to improve their conditions of captivity.

- Film footage of PWs of all nationalities including Allied forces in recent conflicts has drawn criticism from many sources including Amnesty International, Human Rights Watch and other NGOs. The UK forces in the MEAO are reported to have received inquiries from the UK Attorney General's office wanting to know why film footage had been released by the UK military PA staff involving pictures of PWs. The US is reported to have had similar problems.

Australian Issues

- In relation to film footage that Defence might have of Iraqi PWs captured at sea, it would be legally permissible to show that film provided the faces of the PWs are blanked out and the PWs cannot be identified in any other way.

Conclusion

- It may appropriate to reiterate, if not amplify, the ADF position on this issue.

Recommendations

- It is recommended that CDF approve the attached draft EXECUTO AMP to achieve the following:
 - That commanders are reminded of their obligations under Article 13 of Geneva Convention III and Article 27 of Geneva Convention IV.
 - That no Defence film or photographs of PWs and civilian detainees/internees shall be publicly released without DGMPA approval. [Note: any film or photographs submitted for approval should already have the faces of the PWs blanked out]
 - That ADF commanders and personnel are to take steps to reduce the opportunities for PWs and civilian detainees/internees in their custody or within ADF facilities or vessels to being filmed or photographed by any non-ADF person (journalists, cameraman or any other relevant persons involved).
 - That the clear preference is to avoid such incidents by taking positive steps to prevent PWs and civilian detainees/internees from being placed in public view. However, if filming is or becomes inevitable, then ADF commanders and personnel shall:
 - ask journalists, cameramen or any other relevant person involved not to film/photograph the faces of PWs and civilian detainees/internees or if this has occurred that those images not be shown/transmitted or that the faces be blanked out;
 - advise journalists, cameramen or any other relevant person involved that failure to comply with these requests will be a breach of the Geneva Conventions; and
 - that if a breach does occur, then journalists, cameramen or any other relevant person involved, and their organisation, may be denied further reporting rights.

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- Force is not to be used against journalists, cameramen or any other relevant person to prevent the filming or photographing of PWs and civilian detainees/internees contrary to ADF instructions.
- ADF personnel shall not take personal imagery of any PWs and civilian detainees/internees.
- PWs and civilian detainees/internees in ADF custody or within ADF facilities or vessels shall not be made available for interview by the media.

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24 Mar 03

Contact:

[Signature]
APPROVED/NOT APPROVED
D.J. COSGROVE
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24 Mar 03

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FROM: CDF AUSTRALIA

TO: COMAST

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SUBJ: CDF EXECUTE ORDER 02/03 - OPERATION FALCONER - AMP XX

A. CDF AUSTRALIA I3P OF 172345Z MAR 03 (EXECUTO 02/03 OP FALCONER)

1. SITUATION. OP FALCONER IS THE ADF CONTRIBUTION TO US-LED COALITION OPERATIONS AGAINST IRAQ IOT REMOVE THE THREAT POSED TO GLOBAL SECURITY BY IRAQ'S WMD CAPABILITY. REF A ORDERED THE EXECUTION OF OP FALCONER.

2. MISSION. UNCHANGED.

3. EXECUTION.

3.A. CDF INTENT. IN ORDER TO FULLY COMPLY WITH AUSTRALIAN OBLIGATIONS IAW THE GENEVA CONVENTIONS, DEFENCE FILM AND/OR PHOTOGRAPHS OF PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES ARE NOT TO BE PUBLICLY RELEASED WITHOUT DGMMPA APPROVAL. HOWEVER, FORCE IS NOT TO BE USED AGAINST JOURNALISTS, CAMERAMEN OR ANY OTHER NON-ADF PERSON TO PREVENT THE FILMING OR PHOTOGRAPHING OF PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES.

3.B. TASK. COMAST IS TO ENSURE COMMANDERS ARE REMINDED OF THEIR OBLIGATIONS UNDER ARTICLE 13 OF GENEVA CONVENTION III, ARTICLE 27 OF GENEVA CONVENTION IV AND THE INSTRUCTIONS AT PARA 3.C.

3.C. COORDINATING INSTRUCTIONS.

3.C.1. DEFENCE FILM AND/OR PHOTOGRAPHS OF PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES ARE NOT TO BE PUBLICLY RELEASED WITHOUT DGMMPA APPROVAL.

3.C.2. ADF COMMANDERS AND PERSONNEL ARE TO TAKE STEPS TO REDUCE THE OPPORTUNITIES FOR PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES IN THEIR CUSTODY OR WITHIN ADF FACILITIES OR VESSELS TO BEING FILMED OR PHOTOGRAPHED BY ANY NON-ADF PERSON (JOURNALISTS, CAMERAMAN OR ANY OTHER RELEVANT PERSON INVOLVED).

3.C.3. INCIDENTS SHOULD BE AVOIDED BY TAKING POSITIVE STEPS TO PREVENT PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES FROM BEING PLACED IN PUBLIC VIEW. HOWEVER, IF FILMING IS OR BECOMES INEVITABLE, THEN ADF COMMANDERS AND PERSONNEL ARE TO:

3.C.3.A. REQUEST JOURNALISTS, CAMERAMEN OR ANY OTHER RELEVANT PERSON INVOLVED NOT TO FILM OR PHOTOGRAPH THE FACES OF PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES, OR IF THIS HAS OCCURRED THAT THOSE IMAGES NOT BE SHOWN OR TRANSMITTED, OR THAT THE FACES BE BLANKED OUT; AND

3.C.3.B. ADVISE JOURNALISTS, CAMERAMEN OR ANY OTHER RELEVANT PERSON INVOLVED THAT FAILURE TO COMPLY WITH THESE REQUESTS WILL BE A BREACH OF THE GENEVA CONVENTIONS, AND THAT IF A BREACH DOES OCCUR, THEN JOURNALISTS, CAMERAMEN OR ANY OTHER RELEVANT PERSON INVOLVED, AND THEIR ORGANISATION, MAY BE DENIED FURTHER REPORTING RIGHTS.

3.C.4. FORCE IS NOT TO BE USED AGAINST JOURNALISTS, CAMERAMEN OR ANY OTHER NON-ADF PERSON TO PREVENT THE FILMING OR PHOTOGRAPHING OF PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES.

3.C.5. ADF PERSONNEL ARE NOT TO TAKE PERSONAL IMAGERY OF ANY PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES.

3.C.6. PW, CIVILIAN DETAINEES AND CIVILIAN INTERNEES IN ADF CUSTODY OR WITHIN ADF FACILITIES OR VESSELS ARE NOT TO BE MADE AVAILABLE FOR INTERVIEW BY THE MEDIA.

4. ADMIN AND LOGISTICS. UNCHANGED.

5. COMMAND AND SIGNAL. UNCHANGED.

6. POC.

6.1. ADHQOPS OPS - AIROPS1, WCDR D.S.CARR, (02) 626 50042.

6.2. ADHQOPS LEGAL - ADOIL-SC, WCDR C.T. HANNA, (02) 626 50057.

7. ACKNOWLEDGMENT. ACTION ADDRESSEES ARE TO ACK TO ADHQOPS
WATCHKEEPER

[Handwritten Signature]
GEN
CSA
24 Mar 03