

ITEM: TREATMENT AND STATUS OF PERSONNEL
CAPTURED BY THE ADF DURING MILITARY
OPERATIONS IN AFGHANISTAN

Background

- * The Department of Defence is presenting this submission.
- * The Attorney General's Department (AGD) advises that

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- * Upon receipt of the AGD advice and a response from General Franks, CDF directed the ADF to operate on the following basis in Afghanistan:
 - The US will assume responsibility for captives taken during combined AS/US operations (effectively, the ADF assists the US to take captives).
 - The ADF will retain custody of those captives taken during separate ADF operations, thereby allowing Government to make decisions as to the future handling of those captives.
- * The ADF has taken steps, including placing a deployable detainee handling capability on standby in Australia, to prepare for the holding of captives in Afghanistan pending further Government direction regarding those captives. As yet, the ADF has not taken custody of any captured personnel in Afghanistan. However, the ADF has assisted US forces to take captives.

Issues

The current procedures for combined Australian/US operations has proved to be effective. Defence, however, would like Cabinet to note that further Government input will be required should the ADF retain custody of any captives

The media and others may seek to characterise any differences between the AS and US legal positions, as evidence of Coalition disharmony.

Talking Points

The Government position since the start of Operation SLIPPER has been that the Laws of Armed Conflict apply. This has included ministerial statements to the media to this effect.

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The ADF has managed this issue by the adopting the procedures that where Australian and US forces are working closely together, the US forces will take responsibility for any captives. Effectively, the ADF assists the US forces with each capture. This procedure has been applied on a number of occasions.

During solely Australian operations, the ADF may take captives, where it will be difficult to ascribe legal responsibility for those captives to another nation. In these circumstances, the ADF intends to retain the captive pending Government consideration and direction. The ADF has planned and prepared accordingly.

The treatment and status of detainees has an ongoing potential to be characterised by the media and others as a sign of division between the coalition partners. However, relations with the US on this issue remain friendly and respectful.

Defence seeks ratification from Cabinet of current procedures for combined Australian/US operations on the basis that these have proved to be effective. Defence, however, would like Cabinet to note that further Government input will be required should the ADF retain custody of any captives.

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Date: 6 Nov 02