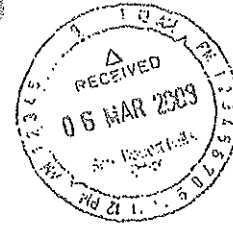


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AUSTRALIAN DEFENCE HEADQUARTERS  
Strategic Operations Division  
MINUTE



B253363  
CDF 2/15/03

CDR No: .....

SERIAL: 393 .....

Minister for Defence

For action by: 7 March. This issue has a capacity to gain a separate momentum. This is an issue that has to be completed before any potential operations commence.

REQUEST FOR APPROVAL TO NEGOTIATE PRISONER OF WAR / CIVILIAN  
DETAINEE ARRANGEMENTS

RECOMMENDATION

That you approve the initiation of negotiations with potential coalition partners regarding arrangements for their holding, on behalf of Australia, prisoners of war and civilian detainees captured by ADF elements, should the Government decide to commit ADF elements to operations against Iraq.

OVERVIEW

- Australia is, and the United States is not, party to the First Additional Protocol to the Geneva Conventions of 1949 (AP I). The United Kingdom is also party to AP I. In the event that Australia participates with the United States and the United Kingdom in a conflict in Iraq, Australia may have slightly different obligations with respect to the treatment of prisoners of war and civilian detainees than has one or more of its potential coalition partners.
- Should the Government choose to participate in an armed conflict in Iraq, the ADF has no plans to deploy, nor to have on standby in a \_\_\_\_\_ of war / civilian detainee handling facility. Current ADF planning anticipates that any prisoners of war / civilian detainees captured by ADF elements in Iraq will be transferred to another coalition partner.
- Australia has legal obligations under Geneva Conventions III and IV to satisfy itself that any coalition partner to which it transfers a prisoner of war or civilian detainee will abide by Australia's obligations under the relevant convention. These obligations may be satisfied by Australia entering into arrangements with coalition partners regarding those partners' handling and treatment of a prisoner/detainee captured by the ADF. The purpose of those arrangements would be to ensure that Australia is able to comply with its international obligations.
- Therefore, there is a requirement for Australia to negotiate arrangements with its coalition partners which will permit Australia to hand prisoners and other detainees over to those partners while complying with its international obligations. Such arrangements would be negotiated at the national strategic level (with appropriate coordination with DFAT and

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(the Attorney General's Department), but authority to commit to the arrangements would be delegated to the Commander Australian National Headquarters, Middle East Area of Operations.

Sensitivity. Yes; the Government has not yet made any decision to participate in a conflict in Iraq.


Resources. There are no resource/funding implications.

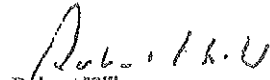
Enclosure:

1. Draft United Kingdom/United States/Australia transfer arrangement.

AUTHORISED:

APPROVED/NOT APPROVED

  
P.J. COSGROVE  
GEN  
CDF  
Mar 03

  
Robert Hill  
12/3/03

SECTION 4.1  
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**SENSITIVITY**

Negotiation of prisoner of war / civilian detainee handling arrangements, although prudent for coalition operations planning, may be perceived as an indication that the Government of Australia has committed the ADF to war in Iraq.

**BACKGROUND**

- **Transfer.** Article 12 of Geneva Convention III restricts Australia from handing a prisoner of war over to another power unless Australia has satisfied itself that the transferee power is willing and able to accord the same treatment as the prisoner of war would have received in accordance with Australian international obligations. Article 45 of the 4<sup>th</sup> Geneva Convention places a similar restriction on the transfer among powers of civilian detainees.
- **Difference between Australian / United States' obligations.** AP I imposes additional obligations on Australia to convene a judicial tribunal to determine prisoner of war status in circumstances where a captive who claims to be a prisoner of war is charged with a crime arising out of the hostilities during which s/he has been captured.
- **Proposed Prisoner of War/civilian detainee transfer arrangements.** Draft arrangements for the transfer of prisoners of war and civilian detainees between the United Kingdom, United States and Australia have been discussed in the Middle East Area of Operations, primarily between the United States and United Kingdom but with Australian presence during discussion. A copy of the draft transfer arrangement is enclosed. Your approval is required for Australian representatives in the Middle East Area of Operations to participate formally in discussions concerning the transfer arrangement.

**CONSULTATION**

- SECTION 92
- The Attorney-General's Department
- Department of Foreign Affairs and Trade

**COMMUNICATION ASPECTS:** Not applicable

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