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AUSTRALIAN DEFENCE HEADQUARTERS
Chief of the Defence Force
MINUTE

CDF 4-24 /03
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Minister for Defence

For Action By: 24 March

MINSUB - OPERATION FALCONER - PW AND DETAINEE MOVEMENTS

RECOMMENDATION

That you approve the proposed PW and detainee handling procedures where such PWs or detainees, captured by ADF force elements, are possibly Australian nationals, Iraqi Leadership Figures, have been involved in conduct that could amount to a war crime or have been involved in other conduct that gives rise to a possible serious offence.

OVERVIEW

- It is possible that ADF force elements in Iraq may capture or preliminarily detain Australian nationals, Iraqi Leadership Figures (identified members of the Iraqi military and civilian leadership) or other people suspected of having been involved in conduct that could amount to a war crime or have been involved in other conduct that gives rise to a possible serious offence. Australian nationals may be either dual nationals serving with the Iraqi Defence Force (IZDF) or those participating as "human shields".
- Australian nationals who are serving as members of the IZDF are not entitled to PW status on capture by, or surrender, to, the ADF. However, such IZDF members would be treated as PWs until their Australian nationality was confirmed. Once an IZDF member's Australian nationality was confirmed, he or she could be detained on the same basis as an Australian civilian national. In any event, such persons would be entitled to the fundamental guarantees (to protection from violence to life and otherwise to be treated humanely and, if interned, to be notified of the reasons for internment) contained in art 75 of Additional Protocol I (API).
- Iraqi Leadership Figures who are members of the Iraqi military leadership, or who are members of the Iraqi civilian leadership whose contribution to the Iraqi military effort is such that they have been identified as a lawful military objective, are entitled to PW status.
- As the ADF does not have an in-theatre ability to handle PWs/civilian internees/civilian detainees beyond initial capture, current planning presumes that any person captured by the ADF force elements will be handed over to a coalition partner. Such a procedure is reflected in the pending arrangement for the transfer of PWs, civilian internees and civilian detainees between the forces of the UK, US and Australia. Pursuant to that arrangement, Australia retains the discretion whether or not to transfer a PW, civilian internee or civilian detainee.

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- Notwithstanding the right of Australia, as established by the pending UK/US/AS arrangement, to request the unconditional handback of PWs, civilian internees or civilian detainees captured by ADF FE and previously transferred, instances may arise where it is thought prudent to retain Australian control and/or custody of specific PWs, civilian internees or civilian detainees. This includes, but is not limited to the capture by ADF force elements of:
 - Australian nationals, whether fighting with IZDF or those participating in "human shields";
 - Iraqi Leadership Figures; or
 - Those PWs, civilian internees or civilian detainees suspected of having been involved in conduct that could amount to a war crime or having been involved in other conduct that gives rise to a possible serious offence.

Proposed PW and detainee handling procedures

- Noting the specific lack of a designated Australian in-theatre ability to handle PWs/civilian internees/civilian detainees beyond initial capture and processing, it is suggested that the following procedures be adopted. Where ADF force elements capture:
 - Persons claiming, or otherwise suspected of holding, Australian nationality. Such Australian nationals shall be kept under direct Australian control and custody, pending confirmation of nationality and further Government direction and advice;
 - Iraqi Leadership Figures. Such persons shall be transferred to either UK or US forces as directed by GOAS; and
 - Suspected criminals, PWs, civilian internees or civilian detainees suspected of having been involved in conduct that could amount to a war crime or having been involved in other conduct that gives rise to a possible serious offence, shall be transferred to either UK or US forces as directed by GOAS.
- After initial capture and processing, persons not falling into any of the above categories will be transferred automatically to UK or US forces pursuant to the transfer arrangement.

Sensitivity. Yes, any possible reference to captured Australian nationals, Iraqi leadership regime or possible war crime suspects would receive high media coverage

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Resources. There are no resource/funding implications

AUTHORISED:

APPROVED/NOT APPROVED

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23/ Mar 03

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