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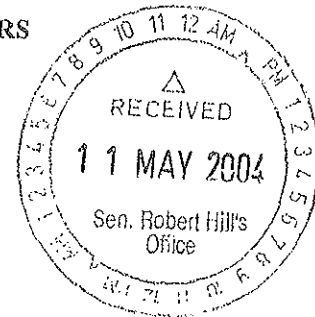
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AUSTRALIAN DEFENCE HEADQUARTERS
Strategic Operations Division

MINUTE



DEPSEC S/OUT/2004/188

Minister for Defence

For Action By: Immediate for situational awareness.

OP CATALYST - ARRANGEMENTS FOR THE TRANSFER OF ENEMY PRISONERS OF WAR

RECOMMENDATION

1. That you **note** arrangements for the handling and transfer of Enemy Prisoners of War (EPW) agreed between Australia, the US and the UK.

OVERVIEW

2. On 10 May 04, your staff requested a brief on the documents/agreements/MOUs regarding the capture, handling and transfer of EPWs in the MEAO. Information was also requested regarding what arrangements were in place prior to the conflict and what occurred when EPWs were taken/transferred/transported by Australian forces.

3. The primary international conventions for the handling and treatment of EPWs and detainees are the 1949 'Geneva Convention Relative to the Treatment of Prisoners of War' (GC III) and the 'Geneva Convention Relative to the Treatment of Civilian Persons in Time of War' (GC IV). Australia is also a party to the 1977 Additional Protocol I to the Geneva Conventions, which contains additional obligations in relation to the treatment of EPWs and detainees. All signatories to these conventions are obligated to ensure all EPWs and detainees are treated in accordance with the conventions and protocols they have ratified.

4. The US has not signed Additional Protocol I to the Geneva Conventions. This created a potential problem for the coalition in that EPWs transferred between different national handling/holding facilities would be subject to different protocols. The Geneva Conventions place the onus for upholding the rights of a prisoner of war with the Detaining Power. Therefore each Detaining Power is required to ensure every person they have detained is treated in accordance with their obligations under the Geneva Conventions and protocols.

5. In order to allow these principles to be enforced, a tripartite arrangement was developed that allowed for the detention of any detainees by any of the coalition partners. The relevant document regarding the handling of EPWs is titled "AN ARRANGEMENT FOR THE TRANSFER OF PRISONERS OF WAR, CIVILIAN INTERNEES, AND CIVILIAN DETAINEES BETWEEN THE FORCES OF THE UNITED STATES OF AMERICA, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND AUSTRALIA". This document was signed on 23 Mar 03 and is at attachment 1. Advice was provided to Government at attachments 2 and 3.

6. The arrangement formalises the transfer of any Enemy Prisoners of War, civilian internee or detainee from a Detaining Power to an Accepting Power, but does not relieve the Detaining Power of its responsibility to ensure the EPWs (or detainee's) rights under the Geneva Conventions, Additional Protocols and International Law are upheld. It formalises

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accordance with their obligations. Without this agreement each of the coalition partners would have needed their own holding and detention facilities.

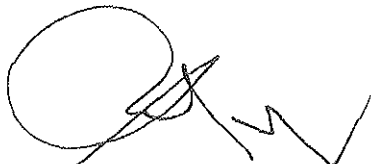
7. Prior to the signing of this document, there were no formal arrangements between the coalition partners dealing with the transfer of EPWs or detainees. Each state was operating in accordance with the Geneva Conventions and its own legal obligations.

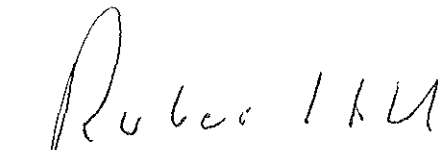
8. There were four instances involving Australian forces in the capture/transfer/transportation of EPWs during the Iraq War in 2003. In no instance did Australia become the Detaining Power nor an Accepting Power. US forces on the scene became the Detaining Power in each instance and the role of Australian forces was limited to assisting US forces in the detention or transportation of EPWs or detainees.

Sensitivity. Yes. The treatment of prisoners is topical and is attracting significant media attention.

AUTHORISED:

NOTED


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11 May 04

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Section 11

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