

Portfolio Overview and major corporate issues

QUESTION 1

ADF Legal Officers Serving in Iraq

Senator Evans and Faulkner

Proof Hansard: pages 13-15 (31 May 2004)

Can Defence provide a list of the positions and responsibilities of the ADF legal officers serving in Iraq from March 2003?

RESPONSE

No ADF legal officers were deployed inside Iraq until May 2003. ADF legal officers served in three positions in Iraq from May/June 2003. A total of seven ADF legal officers have occupied the positions from May 2003 to the present.

- A Lieutenant Colonel (equivalent) legal officer served as the legal adviser on the staff of Headquarters JTF633. This legal officer provided advice to Commander JTF633 on all legal issues affecting the Australian national headquarters.
- A Major (equivalent) legal officer filled the position of legal officer in CJTF-7 on the staff of the Staff Judge Advocate. This legal officer was based in the operations law section and provided advice, through the Staff Judge Advocate, on operations law issues affecting CJTF-7.
- A Colonel (equivalent) legal officer served in the Office of General Counsel in the Coalition Provisional Authority providing legal advice to Ambassador Bremer on a range of legal issues affecting Coalition Provisional Authority activities. This position was filled on one occasion by a Lieutenant Colonel legal officer. An additional Colonel legal officer was attached to the Coalition Provisional Authority's legal staff in March 2004 to assist with Coalition Provisional Authority legal issues.

QUESTION 2

Written Requests from the Minister to Defence Regarding Alleged Prisoner Abuse

Senator Faulkner

Proof Hansard: page 35 (31 May 2004)

Can Defence provide the number, the date and the nature of written requests from the Minister or the Minister's office on matters relating to ADF knowledge of alleged prisoner abuse?

RESPONSE

Defence has records of four written requests from the Minister and Minister's office on matters relating to Defence's knowledge of the allegations of detainee abuse. Those requests are detailed below. There was also an oral request from the Minister's Office on 11 May 2004 which is included below.

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11 May 2004 – the Minister’s Office relayed by phone a series of questions relating to prisons, prisoners, the ADF role in detention and what, if any, obligations we had.

17 May 2004 – email from the Minister’s Office relaying the Minister’s request that all ADF personnel who had contact with the prison be listed by name and be interviewed by The Defence Legal Service.

18 May 2004 – in response to advice from Deputy Secretary Strategy dated 14 May, the Minister makes annotation requesting that the Director General, The Defence Legal Service interview an ADF officer and any other person who had significant contact with the Abu Ghraib prison at relevant times.

27 May 2004 – email from the Minister’s office requesting advice on the publication of a photograph of Major George O’Kane in a Defence newsletter.

3 June 2004 – email from the Minister’s office seeking advice on prisoner of war management arrangements and prisoner of war incidents in which the ADF was involved.

QUESTION 3

Visits by Senior ADF Personnel to Coalition Detention Centres

Senator Faulkner

Proof Hansard: pages 40-41 (31 May 2004)

Can Defence provide a list, by rank or position above Major, of ADF personnel, other than the legal officers, who visited Coalition detention centres, together with a brief description of the circumstances?

RESPONSE

- a) While Defence has knowledge of a large proportion of visits to Coalition detention centres, without questioning all officers above the rank of Major who have deployed, this question cannot be answered in an absolute sense. If such a task was undertaken, it could take several weeks to complete.
- b) As of 9 June 2004, Defence knows of the visits outlined in the table below.

Visits to Abu Ghraib

Rank	Visit Date or Deployment Dates	Comments
Commodore	1 January 2004	Visited Abu Ghraib to perform a promotion ceremony.
Commander	early August/early September/mid October 2003 1 February 2004	CJTF7 Headquarters familiarisation and liaison.
Colonel	1 January 2004	On 1 January 2004 he attended to see the promotion of his nephew who is in the US 82 nd Airborne Division. As part of that visit, he took up an offer for an orientation tour of the facility.
Lieutenant Colonel	7 March 2004	Visited Abu Ghraib with another Australian and a group of CJTF-7 staff on 7 March 2004 as part of an orientation tour.
Lieutenant Colonel	5 October 2003 – 6 April 2004	Visited Abu Ghraib as part of his duties where he witnessed the prisoner receipt process.

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Lieutenant Colonel	26 November 2003 – present	Visited Abu Ghraib on an orientation tour with two other Australians from JTF 633.
Lieutenant Colonel	10 August 2003 – 11 February 2004	Visited Abu Ghraib as part of his duties and observed detainees in the external holding cages in the compound.
Group Captain	1 January 2004	Visited Abu Ghraib along with CJTF-633 to witness a promotion ceremony.
Wing Commander	16 July – 15 December 2003	Visited Abu Ghraib prison in his capacity as CJTF7 Deputy C2 Forward, where he had discussions with a Colonel based at Abu Ghraib.
Wing Commander	8 January 2004	Visited Abu Ghraib on a familiarisation visit with two other JTF 633.
Chaplain	10 September 2003 – 9 March 2004	Visited Abu Ghraib on an orientation tour. He was shown the Coalition living quarters and the outdoor holding area.

Visits to Other Detention Facilities

RANK	DATES	COMMENTS
Brigadier	May 2003/July 2003	Present during part of the Iraq Survey Group reconnaissance of Coalition Operating Base South and Camp Cropper.
Lieutenant Colonel	2 November 2003 – 8 May 2004	Visited Camp Cropper during his initial orientation and familiarisation with Iraq Survey Group operations and facilities.
Group Captain	16 July –31 October 2003	Had contact with prisoners in police holding cells in Karbala, Ad Diwaniyah and Al Hillah region. Part of his duties involved inspecting police stations and prisons and then organising projects to refurbish those facilities.

QUESTION 4

DGTDLS Interview with Major O’Kane

Senator Faulkner

Proof Hansard: page 60 (31 May 2004)

Did the Director General, The Defence Legal Service interview Major O’Kane on 11 May 2004 about alleged mistreatment of prisoners?

RESPONSE

No. The Director General, The Defence Legal Service obtained information from Major O’Kane on 12 May 2004.

QUESTION 5

Major O’Kane’s Draft Letter in Response to ICRC October Report

Senator Faulkner

Proof Hansard: page 77 (31 May 2004 see also Proof Hansard 1 June 2004 page 57)

Can Defence provide to the Committee the draft letter produced by Major O’Kane in response to the October report of the International Committee of the Red Cross?

RESPONSE

No. Defence is not in a position to release, without consultation, on its own authority documents which are the property of another State.

QUESTION 6

Checks on Defence Website, Intranet Sites and Email

Senator Faulkner

Proof Hansard: page 79 (31 May 2004)

Has National Operations Division conducted checks on any Defence website or intranet, or any electronic mail or computer generated site within Defence to ascertain whether they contain graphic pictures of Iraqi prisoners being abused?

RESPONSE

As at 31 May 2004, the National Operations Division had not instigated, nor was it aware of, any checks of information systems under its control for graphic pictures of Iraqi prisoners being abused.

Subsequently, checks have been undertaken by the administrators of the Defence restricted and secret networks. A number of images showing mistreatment or abuse of prisoners have been found. These images of abuses were taken from the public domain, generally downloaded from the internet. For example, some images of abuse were incorporated into presentations prepared for use in a training program to illustrate breaches of the Geneva Conventions and draw attention to the types of excesses that can occur. The images were intended to highlight the consequences of a lack of training and supervision.

QUESTION 7

Visits to Abu Ghraib Prison

Senator Faulkner

Proof Hansard: page 4 (1 June 2004)

How many times did the Colonel replacing Lieutenant Colonel Muggleton visit the Abu Ghraib prison?

RESPONSE

A Group Captain replaced Lieutenant Colonel Muggleton. That officer has only visited Abu Ghraib once.

QUESTION 8

Visits to Abu Grahb Prison by Lieutenant Colonel Muggleton

Senator Faulkner

Proof Hansard: page 5 (1 June 2004)

On what dates did Lieutenant Colonel Muggleton visit Abu Ghraib prison?

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RESPONSE

Lieutenant Colonel Muggleton visited Abu Ghraib twice, on 2 January 2004 and on, or about, 1 February 2004.

QUESTION 9

Awareness of Amnesty International and ICRC reports

Senator Brown

Proof Hansard: page 13 (1 June 2004)

- a) Did the colonel who worked at the Coalition Provisional Authority from May-November 2003 know about the Amnesty International report released in July 2003 in Baghdad?
- b) When did he first know about the International Committee of the Red Cross October working paper?
- c) Did he make inquiries into the allegations of prisoner mistreatment at Abu Ghraib detailed in that working paper?

RESPONSE

- a) Yes.
- b) No. He doesn't ever recall seeing the October working paper in Iraq and certainly made no reports on the subject.
- c) No.

QUESTION 10

Major O'Kane's Tasking Concerning the October ICRC Working paper

Senator Faulkner

Proof Hansard: page 36 (1 June 2004)

What was the nature of the tasking passed to Major O'Kane by the deputy staff judge advocate in relation to the draft response to the October working paper of the International Committee of the Red Cross?

RESPONSE

The nature of the tasking was to review the two International Committee of the Red Cross working papers, summarise the concerns for consideration by the CJTF-7 chain of command, and prepare a draft reply on behalf of the Commander of the 800th Military Police Brigade (US Army). It was delegated to Major O'Kane by the Deputy Staff Judge Advocate because the US Army Officer in the position of Chief Detention Operations, in the Office of the Staff Judge Advocate, was busy with other issues.

QUESTION 11

Major O’Kane’s Post-Deployment Report

Senator Faulkner

Proof Hansard: page 38 (1 June 2004)

Can Defence provide information about what action, if any, was taken by the addressees to Major O’Kane’s post-deployment report? When did those addressees receive the report?

RESPONSE

The copies to the Director General The Defence Legal Service and the Director Army Legal Service were posted by Major O’Kane from Iraq on or around 9 February 2004, and were received by The Defence Legal Service on 23 February 2004. These copies of the report were dealt with as described by the Director General The Defence Legal Service at the estimates hearing on 1 June 2004 (see page 40 of Proof Hansard).

The copy to Commander Task Force 633, Commodore Cameron Darby, was emailed by Major O’Kane on or around 9 February 2004. There is no record of it having been received or of any action having been taken.

QUESTION 12

Query Regarding ‘two-star information paper’

Senator Brown

Proof Hansard: page 49 (1 June 2004)

In relation to part 5.c.(v) of Major O’Kane’s post-deployment report, what is the ‘two-star information paper on targeting of civilian structures during offensive operations’ and what are the guidelines for the targeting of civilian structures in Iraq?

RESPONSE

Questions about US documents and US targeting policy are a matter for the United States Government.

QUESTION 13

Information on Iraqi Civilian Casualties

Senator Brown

Proof Hansard: page 50 (1 June 2004)

Can Defence check with the US authorities on what efforts are being made to compile statistics on civilian dead and injured as a result of military action in Iraq, and what the best estimates might be?

RESPONSE

Questions related to civilian casualties in Iraq should be referred directly to the US Government.

QUESTION 14

Major O’Kane Contact with the Australian Representatives Office in Iraq

Senator Evans

Proof Hansard: page 56 (1 June 2004)

Can Defence confirm if Major O’Kane ever reported to the Australian Representative Office in Iraq his involvement with the October working paper of the International Committee of the Red Cross and his preparation of a draft response?

RESPONSE

Major O’Kane did not report to the Australian Representative Office on his involvement with the October working paper.

QUESTION 15

Major O’Kane’s Documents

Senator Evans

Proof Hansard: page 56 (1 June 2004)

What documentation did Major O’Kane make available to Defence on 11 May 2004?

RESPONSE

Major O’Kane provided copies of what appear to be ICRC working papers and several other draft documents that he stated he had worked on during his deployment. Seven documents were passed as below:

1. Copy of slides – Presentation on Geneva Convention Obligations.
2. Draft copy of letter dated 25 January 2004 from Lieutenant General Sanchez, Commander CJTF-7 to Ms Eva Svoboda, Protection Coordinator, International Committee of the Red Cross, concerning access to a named detainee. The letter is unsigned.
3. Draft copy of letter dated 24 December 2004 from Brigadier Karpinski, Commander, 800th Military Police Brigade to the International Committee of the Red Cross Protection Coordinator. The draft letter is titled “*ICRC visits to Camp Cropper and Abu Ghurayb in Oct 03*”. Letter is unsigned.
4. Draft copy of report dated 23 January 2004 from Staff Judge Advocate to Commanding General CJTF-7, through Chief of Staff CJTF-7 and Deputy Commanding General CJTF-7. The subject of the report is International Committee of the Red Cross Out-brief of 17-19 January 2004 Inspection of the HVD Facility at Camp Cropper, BIAP. The report is unsigned.
5. Draft copy of post-deployment report dated 8 February 2004 from Major O’Kane to Commander JTF 633, Staff Judge Advocate, HQ V Corps, the Director General, The

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Defence Legal Service, the Director Army Legal Service, the Director Operational and International Law. The report is unsigned.

6. *18-24 October 2003*”, dated 30 October 2003. Copy of confidential Working Paper titled “*ICRC visit to the ‘Special Detention Facility,*
7. Copy of confidential Working Paper titled “*ICRC visit to Baghdad Central Detention Facility, 9-12 and 21-23 October 2003*” dated 6 November 2003.

QUESTION 16

Communication between the Australian Consulate and ADF Lawyers

Senator Brown

Proof Hansard: page 57 (1 June 2004)

Can Defence confirm if Australian consular officials in Baghdad were informed about the reports from ADF lawyers in the Coalition Provisional Authority that were sent to the Temporary Liaison Officer?

RESPONSE

Yes. Many but not all of the sitreps of the ADF lawyers in the Coalition Provisional Authority were forwarded to officials in the Australian Representative Office and to the Temporary Liaison Officer.

QUESTION 17

Letter of 27 August 2003

Senator Brown

Proof Hansard: page 57 (1 June 2004)

Can Defence provide a copy of the 27 August 2003 letter drafted by Major O’Kane that related to drafting the policy for the interrogation of prisoners?

RESPONSE

No. Defence is not in a position to release, without consultation, on its own authority documents which are the property of another State.

QUESTION 18

‘Fight for Fallujah’ Media Article

Senator Brown

Proof Hansard: page 59 (1 June 2004)

Can Defence provide to the Committee further information on the so-called ‘Fight for Fallujah’ in April-May 2004 than that detailed in an article in *The Australian* on 11 May 2004 entitled ‘An Aussie’s fight for Fallujah’?

RESPONSE

The article in *The Australian* centred on an ADF member on exchange with 1st Marine Expeditionary Force. As no formed ADF units were involved in this action, Defence does not have access to US tactical-level reports and therefore has no additional details of the operation.

QUESTION 19

Human Rights Concerns in Iraqi Jails

Senator Evans

Proof Hansard: page 60 (1 June 2004)

- a) Did the Temporary Liaison Officers in Iraq talk to Colonel Muggleton about the October working paper of the International Committee of the Red Cross?
- b) Can Defence provide details on what the Temporary Liaison Officer knew about:
 - i) Colonel Muggleton's work and his knowledge of prisoner abuse; and
 - ii) Major O'Kane's work and his knowledge of prisoner abuse.
- c) Did Colonel Muggleton and Major O'Kane report to the Temporary Liaison Officer on their knowledge of prisoner abuse?

RESPONSE:

- a) No.
- b)
 - i) The Temporary Liaison Officer (TLO)'s knowledge of Colonel Muggleton's work was limited to the reporting contained in Colonel Muggleton's sitreps. His sitreps did not mention prisoner abuse.
 - ii) The TLO had no knowledge of Major O'Kane's work.
- c) There was no direct reporting link between Lieutenant Colonel Muggleton and the Temporary Liaison Officer. Lieutenant Colonel Muggleton sent copies of his sitreps, via email, to the Temporary Liaison Officer but did not speak to the Temporary Liaison Officer on these issues. Such reports were passed without comment. Major O'Kane operated as part of Combined Joint Task Force 7 and as such he had no direct reporting link with the TLO. No reports were processed through the TLO.

QUESTION 20

Human Rights Concerns in Iraqi Jails

Senator Faulkner

Proof Hansard: page 29 (2 June 2004)

When did the Minister for Defence become aware of the general concerns of the Iraqi minister for human rights about what was happening in Iraqi jails?

RESPONSE

Defence can find no record of the Minister being advised of the general concerns of the Iraqi minister for Human Rights.

QUESTION 21

Date of Lieutenant Colonel Muggleton's visit to Abu Ghraib

Senator Evans

Proof Hansard: page 38 (2 June 2004)

Can Defence provide the exact date of Lieutenant Colonel Muggleton's visit to Abu Ghraib prison?

RESPONSE

See response to question 8.

QUESTION 22

ICRC visits to Abu Ghraib and Camp Cropper

Senator Evans

Proof Hansard: page 39 (2 June 2004)

Can Defence confirm whether or not Lieutenant Colonel Muggleton accompanied the International Committee of the Red Cross on their visit to Abu Ghraib and Camp Cropper which occurred during 4-8 January 2004?

RESPONSE

Lieutenant Colonel Muggleton did not accompany the ICRC representatives during any visit to Abu Ghraib. He did accompany the ICRC representatives during the initial three to four hours of their visit to the High Value Detainee facility at Camp Cropper on 18 January 2004.

QUESTION 23

Lines of Responsibility of ADF Officers Working in the Coalition Provisional Authority

Senator Faulkner

Proof Hansard: page 62 (2 June 2004)

Can Defence state what the lines of responsibility are for ADF officers working for the Coalition Provisional Authority (CPA)? What are their obligations to the CPA and what are their obligations to their Australian employer?

RESPONSE

ADF officers working in the CPA remain under the national command of the ADF, with CJTF 633 exercising national command in Iraq. In relation to their day-to-day work, ADF

officers in the CPA are occupying CPA line positions and are therefore responsible to their CPA superiors for the performance of their line duties.

QUESTION 24

Meetings between the Minister for Defence and Mr Bremer

Senator Brown

Proof Hansard: page 63 (2 June 2004)

Can the Minister for Defence check whether or not the issue of Iraqi human rights arose at the meetings between he and Mr Bremer in April and November 2003?

RESPONSE

Defence has no record of Senator Hill and Ambassador Bremer discussing human rights during Senator Hill's visits to Iraq in November 2003 and April 2004.

QUESTION 25

Iraqis detained on board HMAS *Kanimbla*

Senator Faulkner

Proof Hansard: page 98 (2 June 2004)

Can Defence provide details of the circumstances of the arrest and subsequent detainment of a group of Iraqis on board HMAS *Kanimbla*?

RESPONSE

On 21 March 2003, the HMAS *Kanimbla* was involved in the handling of a total of 54 prisoners as a result of three separate incidents.

In the first incident, a US boarding party boarded the tug *Naihawa* on 20 March 2003. The boarding party disembarked and the tug was monitored overnight. On the morning of 21 March, HMAS *Kanimbla*'s boarding party and a US explosive ordnance demolition team member conducted a second boarding of the tug. Weapons, ammunition magazines and Iraqi uniforms were discovered. As a result, six Iraqis were transferred to HMAS *Kanimbla* and later to USS *Dubuque*.

In the second incident on 21 March 2003, a United States gunship sank an Iraqi patrol boat. The US Coastguard Cutter *Adak* rescued, and consequently captured, three Iraqis from the water. The prisoners of war were transferred to HMAS *Kanimbla* where they received immediate medical care for mild hypothermia and later were transferred to USS *Dubuque*.

In the third incident on 21 March 2003, HMAS *Kanimbla*'s boarding party and a US explosive ordnance demolition team member boarded two tugs and a barge. Eighty-six sea mines were discovered. Forty-five prisoners were subsequently escorted from the vessels by the boarding party and the US explosive ordnance demolition team member and transferred to the USS *Dubuque* via HMAS *Kanimbla*'s boarding craft. US personnel were present at all times and were considered to have effected the capture of the prisoners.

QUESTION 26

ADF Association with the Capture of Individuals in Iraq

Senator Brown

Proof Hansard: page 100 (2 June 2004)

Can Defence provide details on the occasions where ADF personnel were associated with the capture of individuals in Iraq?

RESPONSE

See response to question 25.

In addition, during the period 2 February to 20 April 2003, an ADF member was attached to a UK unit that was involved in raids that resulted in the capture of military and civilian personnel. The ADF member was not physically involved in capture events.

On 11 April 2004, Australian Special Forces manning a checkpoint on a main supply route provided security so that a member of the US forces could effect the capture of 66 Iraqis as a representative of the Detaining Power. The prisoners of war were transported to a US detention centre by UK helicopters.

QUESTION 27

Letter from General Franks to Admiral Barrie

Senator Brown

Proof Hansard: page 44 (3 June 2004)

Can the letter from General Franks to Admiral Barrie (former Chief of the Defence Force) be provided to the Committee?

RESPONSE

No. Defence is not in a position to release, without consultation, on its own authority documents which are the property of another State.

QUESTION 28

120 Prisoners of War

Senator Faulkner

Proof Hansard: page 45 (3 June 2004)

Can Defence inform the Committee what has happened to the 120 prisoners of war enumerated by the Minister [at DFAT Hansard reference Thursday 3 June 2004 pp37-38]?

RESPONSE

On all occasions, the US assumed the role and responsibilities of the Detaining Power.

QUESTION 33

Fact Finding Team Report

Senator Faulkner

Hansard: page 34 (Thursday 17 June 2004)

Will the Minister re-examine the 61-page report developed by the Defence fact finding team and consider whether any further information (in addition to that provided in the Minister's statement) can be provided to the committee?

RESPONSE

The Minister has advised that, having received the document, he was satisfied that the information provided to the Senate on Wednesday 16 June 2004 was an accurate and detailed representation of the fact finding team's report.

QUESTION 34

Defence Legal Officers' Documents

Senator Evans

Hansard: page 38 (Thursday 17 June 2004)

Please provide a list of any documents (other than sitreps) that ADF lawyers in Iraq generated and sent to Defence in Australia that dealt with Iraqi detainee or International Committee of the Red Cross (ICRC) issues.

RESPONSE

The following is the only document (other than the sitreps) that was generated by ADF lawyers in Iraq and forwarded to Defence in Australia contemporaneously that dealt with the Iraqi detainee or ICRC issues:

- Major O'Kane, *Post Deployment Report – MAJOR G.X. O'Kane – Operation Iraqi Freedom (OIF) Operation Catalyst*, dated 9 February 2004.

This document was tabled in the Senate Foreign Affairs, Defence and Trade Committee Budget Estimates Hearing on Tuesday 1 June 2004.

QUESTION 36

ADF Officers' contacts with General Miller

Senator Brown

Hansard: page 45 (Thursday 17 June 2004)

Did any of the ADF officers identified in the response to Question W2 as having met or had contact with Major General Miller discuss prisoner maintenance, control and/or conditions with him?

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RESPONSE

Two of the ADF officers identified in the response to Question W2 (the Group Captain and the Colonel) discussed prisoner management issues with Major General Miller. Given the public interest in Major General Miller's duties in Iraq, Defence has checked and advises that those discussions did not relate to US interrogation procedures or methods.

QUESTION 37

Major O'Kane's Letter

Senator Brown

Hansard: page 47 (Thursday 17 June 2004)

Can Defence communicate the committee's request to the United States Government for a copy of Major O'Kane's letter relating to the policy for interrogation following his visit of 27 August 2003 to Abu Ghraib.

RESPONSE

Defence has communicated the request of the Committee to the United States Government and is awaiting a response.

QUESTION 38

Media Article 'An Aussie's fight in Fallujah'

Senator Brown

Hansard: page 47 (Thursday 17 June 2004)

Did Defence have any foreknowledge that there was to be a story in *The Australian* on 11 May 2004 entitled 'An Aussie's fight for Fallujah'?

RESPONSE

No.

QUESTION 39

Letter from General Franks to Admiral Barrie

Senator Brown

Hansard: pages 47-48 (Thursday 17 June 2004)

Will the Minister for Defence ask the United States Government if a copy of the letter from General Franks to Admiral Barrie (former Chief of the Defence Force) can be provided to the committee. If not, why not?

RESPONSE

It would not be normal practice to put such operational material on the public record. Further, the Minister does not consider it appropriate to request from an allied government that it

release particular items of correspondence between itself and the Australian Government that are a part of a broader exchange concerned with developing operational military arrangements.

QUESTION 40

Defence Fact Finding Report

Senator Faulkner

Hansard: page 49 (Thursday 17 June 2004)

How many pages are in the Defence fact-finding report?

RESPONSE

Excluding material in attached folders and including the ministerial submissions that form part of the document, the Iraq Detainee Fact Finding Report consists of 61 pages.

QUESTION 41

Colonel Muggleton's Situation Report

Senator Faulkner

Hansard: page 55 (Thursday 17 June 2004)

Can the Minister advise the exact date when he first learned of the 17 February situation report (Muggleton #13 tabled in the Senate on 16 June 2004).

RESPONSE

On or around 10 or 11 May 2004.

QUESTION 42

February 2004 International Committee of the Red Cross (ICRC) Report

Senator Evans

Hansard: page 59 (Thursday 17 June 2004)

On what date did the Minister for Defence first see the February 2004 ICRC report?

RESPONSE

May 2004.

QUESTION W1

Senator Bob Brown

- a) What rules or protocols does the ADF have for the handling of prisoners?
- b) Will the government make publicly available ADFP 37?

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- c) Does ADFP 37 make reference to the Geneva Convention and the Hague Protocols?
- d) What reference does the manual make to these conventions and protocols?
- e) How many personnel in the ADF receive training based on ADFP 37?
- f) When is training given?
- g) Who provides the training?
- h) How is training reinforced or the learning outcomes assessed?
- i) Does ADFP 37 specify what procedures ADF personnel are to follow in circumstances where they capture—either alone or in conjunction with allied forces—personnel but then hand those captured persons on to second echelon non-Australian custodial authorities?
- j) Does ADFP 37 impose on ADF personnel any requirement to be responsible for the well-being and safe conduct of captured persons handed over to other non-ADF forces?
- k) Does ADFP 37 permit ADF personnel to hand over prisoners to other non-ADF forces such as the US Central Intelligence Agency?

RESPONSE

- a) The ADF must comply with its obligations under international law in relation to the handling of prisoners. Those obligations are to be found principally in Geneva Conventions III and IV and the Additional Protocols. A chapter of the Australian Army Manual of Land Warfare (MLW 2-1-1) is a Restricted document which provides guidance to Military Police concerning the handling of prisoners of war. Specific guidance is also provided, where required, in executive documentation for operations.
- b) ADFP 37 is an internal document and is not available for public release.
- c) Yes.
- d) ADFP 37 explains their purpose, general principles and application.
- e) All ADF members are required to undergo law of armed conflict training in accordance with Defence Instruction (Operations) 33-1 - ADF Law of Armed Conflict Training.
- f) A range of law of armed conflict training is provided to members of the ADF. This includes initial training, professional development, specific operations courses and pre-deployment training. There are four levels of training available to ADF members, ranging from basic to advanced training. ADF members are trained to a level of understanding commensurate with their duties and responsibilities.
- g) The single-Service Chiefs are responsible for ensuring that ADF members are adequately trained. Training is provided on a single-Service basis in consultation with legal officers and subject matter expert advice. Pre-deployment training is mission/operation specific. More advanced training is provided by the ADF Warfare Centre and The Defence Legal Service.
- h) Law of armed conflict training involves a range of assessments including written examinations and practical exercises.
- i) The issue of handover of prisoners is not specifically covered by ADFP 37. Geneva Convention III outlines the requirements for the handover of prisoners of war.
- j) ADFP 37 outlines the principles relating to treatment of prisoners of war, including the rules relating to prisoner of war status and the protections afforded to prisoners of war. Geneva Convention III outlines the requirements for the handover of prisoners of war.
- k) The issue of handover of prisoners is not covered by ADFP 37 but is subject to Geneva Conventions III and IV and agreement between States.

QUESTION W2

Major General Miller

Senator Bob Brown

Is the department aware of any meetings or contact between Major General Miller and Australian staff of the ARO or ADF in Iraq? Please outline the nature of the contact and when it occurred?

RESPONSE

Defence is aware of the following meetings or contacts by Defence and ADF personnel:

- A Group Captain Legal Officer working in the Coalition Provisional Authority had occasional email contact with Major General Miller.
- A Commander working in the US Headquarters organised Major General Miller's visit to Abu Ghraib and met him.
- A Colonel met him once when Major General Miller visited the Iraq Survey Group.
- A Brigadier in the Iraq Survey Group had occasional email contact with Major General Miller.

The question in relation to contact between other officials at the ARO and Major General Miller should be referred to DFAT.

QUESTION W3

Regarding the Amnesty International report released in Baghdad on July 23, 2003

Senator Bob Brown

- a) When did the Department become aware of the July 23 2003 report by Amnesty International alleging torture and mistreatment of detainees in Iraq?
- b) What information did the Department receive?
- c) What action was taken?
- d) When was the Minister first briefed on the report and what was he told?

RESPONSE

- a) and b) Defence has no record of having formally received the Amnesty International report of July 2003 prior to May 2004. It was, however, a public document. Defence officers and officials were aware of Amnesty International's concerns contained in letters to the CPA, which were first reported in a sitrep for the period ending 29 June 2003. Further mention was made in a sitrep for the period ending 27 July 2003, reporting Amnesty International producing another report for discussion with the CPA. On 14 May 2004, a copy of the report was forwarded to the Minister for Defence with a letter from the National Director of Amnesty International Australia. Senator Hill's office subsequently passed the letter, and attachments, to Defence.
- c) No action was taken by Defence when the report was published, noting that Defence sitreps report that the CPA was responding directly to Amnesty International at that time. The Government is currently considering its response to the letter of 14 May 2004 from Amnesty International Australia.

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- d) No briefings have been provided to the Minister by Defence on the report, although reference to some Amnesty International concerns were however mentioned in passing in ministerial situation updates on 20 June and 1 July 2003.

QUESTION W4

Afghanistan

Senator Bob Brown

- a) What did and does the Australian government know about allegations regarding mistreatment of prisoners in Bagram airbase and other prisons in Afghanistan?
- b) Including when they became aware of allegations and what actions have they taken in response?
- c) How many prisoners did the ADF take in Afghanistan and the details of each instance?
- d) In how many instances were the ADF associated or connected to the taking of prisoners in Afghanistan and the details of each instance?
- e) What guidelines or protocols do the ADF have for the handling of prisoners, including general guidelines and those specific to Afghanistan?

RESPONSE

- a) and b) Defence is not aware of any allegations regarding mistreatment of prisoners at Bagram airbase or any other prisons in Afghanistan other than referred to in public sources.
- c) Australian Special Forces did not capture any prisoners in Afghanistan during the deployment from late 2001 through to late 2002. However, on one occasion, during the preparation for a squadron task on an Al Qaeda training camp, two Afghan locals, a man and a boy, came upon one of the patrols conducting reconnaissance. The Australian-only patrol detained the two in their location temporarily so as not to potentially compromise the patrol and the squadron task. As a result, the task was brought forward 24 hours and the two locals were released once the squadron had inserted. The two locals were held over one night, for approximately 10 hours, and were provided with the patrol members' water, food and sleeping bags.
- d) Australian Special Forces were employed to conduct reconnaissance and adopted a policy of avoiding contact with the enemy. On two occasions, they were requested to assist US Special Forces. This occurred on two occasions and involved assistance with detention and transportation tasks, initially in March 2002 and then on a routine patrol in October 2002. On both occasions, Special Forces personnel assisted US personnel detain and transport an Al Qaeda suspect to a detention facility but, at all times, the suspects remained in US custody. Within a week, both suspects were determined to be of no further interest and were released and returned to their place of residence.
- e) See response to question W1- ADFP 37.

QUESTION W5

Senator Bob Brown

Restrictions on Communication

- a) Have any restrictions been made on ADF personnel communicating with their families or others following the public revelations of abuse?
- b) The Business News, May 23 reported that Defence Secretary Rumsfield has instituted a ban on “digital cameras, cam-recorders and mobile phones with cameras in military compounds in Iraq.” Has a similar ban been instituted by Australia?

RESPONSE

- a) No.
- b) The use of any visual recording equipment is only restricted in classified areas of Australian Defence facilities in Iraq. There are no restrictions on their use in other areas.

QUESTION W6

ADF Intelligence

Senator Bob Brown

- a) Has anyone from Australian military intelligence been deployed in Iraq or Afghanistan? What has been their role?
- b) Have Australian military intelligence or military police personnel served on detachment with US military police or US intelligence units that deployed in Iraq and Afghanistan?
- c) If Australians were serving with such units, were these units or Australian personnel serving with them involved in prisoner interrogations or detention?

RESPONSE

- a) Yes. Those officers provided operational and tactical intelligence analysis and advice to Coalition and Australian commands.
- b) Australian intelligence officers served in the Coalition military headquarters.
- c) In their capacity as intelligence officers in the Coalition military headquarters, ADF officers were not involved in prisoner interrogations or detention.

QUESTION W7

Airport

Senator Bob Brown

Has the ADF protection force in Baghdad or any other element of the ADF force in Iraq (such as the Air Traffic Control element) ever been asked to detach personnel to serve as guards for US-run detention facilities, in particular the highly sensitive US-run special containment facility for high-value prisoners at Baghdad airport?

RESPONSE

No.

Capability Development

QUESTION W10

Anti-Vehicle Mines

Senator Kerry Nettle

- a) What plans does the Government have to replace Australia's obsolete stock of anti-vehicle mines?
- b) Will these be replaced by an anti-vehicle weapon system which is an alternative to landmines?

RESPONSE

- a) and b) Options for a replacement capability are being pursued. The decision on any replacement capability will be in accordance with Australia's international obligations.

Capital Budget (major capital equipment)

QUESTION W8

Abrams M1A1 Tank

Senator Brian Harradine

- a) What trials were conducted before the selection of M1A1 Abrams tanks?
- b) In what way did these trials differ from those conducted in 1972 before the German Leopard 1 was chosen?
- c) Are the British Challenger II, German Leopard 2 A6 and the current American Abrams M1A2 regarded as technically superior?
- d) Is the thermal imaging and communications technology of the Abrams M1A1 a 1987 vintage?
- e) How will the cost of the Abrams gas turbine engine's very high fuel consumption impact on training opportunities for Australian crews?
- f) Is it a fact that the Australian Defence Force off-road vehicles run on diesel fuel whilst the Abrams used JP8 aviation kerosene?
- g) If the M1A1 Abrams purchase proceeds who will recondition/update them and where will the work be done?
- h) Has the possibility of licensed local production been considered as was the case in Egypt (M1A1 basic model)?
- i) Does the price of 59 M1A1 Abrams tanks include the cost of shipment to Australia and the cost of refurbishment?
- j) Where are they to be shipped from?
- k) Will our tanks be upgraded to the standard of M1A2 tanks which have digitally controlled fuel management systems?
- l) According to Luke McIlveen (Hobart *Mercury*, 11 March 2004, p.23) the 59 American M1A1 Abrams tanks will cost \$A550m and that money could buy 68 brand new Leopard 2 (presumably A6 series) tanks at \$A8m each which could save \$A78m by buying 59 Leopard 2 A6 tanks. Does the Department have any response to these statements?

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m) Does the quoted \$A8m for Leopard 2 A6 tanks include recovery vehicles and tankers plus training?

RESPONSE

- a) None. The performance of the candidate tanks had been well established by their past service.
- b) Australia's selection of the German Leopard 1 included field-based performance trials, whereas Australia did not conduct field trials of the M1A1 Abrams tank.
- c) The British Challenger II and German Leopard 2A6 are not regarded as technically superior to the M1A1 Abrams. The American Abrams M1A2 is regarded as technically superior to the M1A1 Abrams, but was assessed as unsuitable for Australia's circumstances.
- d) No. The thermal imaging and communication technology for the Australian M1A1 Abrams tank will be the latest versions available.
- e) The cost of fuel is a very minor component of operating costs and will have no affect on training opportunities for Australian crews. Sufficient training will be available from the agreed operating budget for the tanks.
- f) The Australian M1A1 Abrams will operate on diesel, as it is a multi-fuel engine.
- g) The Australian M1A1 Abrams will be reconditioned/updated by US Government employees and General Dynamics tradesmen at the US Government-owned-and-operated Anniston Tank Plant and the US Government-owned, General Dynamics-operated Lima Tank Plant. Both of these facilities are located in the United States.
- h) Yes. Local production was not pursued due to the high cost and time required to establish the production infrastructure for a small number of tanks.
- i) Yes.
- j) The actual port that the vehicles and associated supplies will be shipped from is yet to be chosen.
- k) No.
- l) The budget for purchase of 59 M1A1 Abrams tanks, recovery vehicles, simulators, other support equipment, ammunition and training is \$528m. The cost of new Leopard 2 tanks is considerably higher than the cost of refurbished M1A1 tanks and does not provide an opportunity to save funds. Mr McIlveen has made an unequal comparison of a full M1A1 tank capability, complete with support vehicles and other equipment, with an incomplete Leopard 2 tank capability without the support components required to make it viable.
- m) No.

Outcome Five: Strategic policy for the defence of Australia and its interests

QUESTION W9

Mines

Senator Kerry Nettle

What plans does the Government have to provide funding for mine action after 2005 when the previous commitment to spend \$100 million in the period 1996-2005 expires?

RESPONSE

The Australian Government's commitment to landmine action will be considered following the development of a global plan of landmine action for the period 2005-09. That plan is expected to be developed at the first Ottawa Convention conference, scheduled to be held in November this year.

Outcome Six: Intelligence for the defence of Australia and its interests

QUESTION 29

Lieutenant Colonel Collins's Security Status

Senator Evans

Hansard: page 62 (Tuesday 1 June 2004)

Was Lieutenant Colonel Collins's security status affected by the Australian Federal Police investigation into leaked information?

RESPONSE

No.

QUESTION 30

Letter regarding Toohey report

Senator Evans

Hansard: pages 77, 78 (Tuesday 1 June 2004)

Please provide the committee with a copy of the letter requesting a review of the Toohey report by Colonel Tracey prepared and signed by The Defence Legal Service (TDLS) staff acting on behalf of General Cosgrove.

RESPONSE

Concerned by the seriousness of the findings in Captain Toohey's Report, General Cosgrove orally instructed TDLS staff to brief Colonel Tracey QC to provide an independent legal review of the Toohey Report. TDLS staff wrote to Colonel Tracey QC and that letter, with attachments, was hand delivered on 22 December 2003.

The letter is attached. There are six documents attached to the letter. These attachments are:

- Report of Captain M.J. Toohey – Investigation into a Redress of Grievance submitted by 332067 – Lieutenant Colonel L. Collins dated 7 September 2003 ('the Toohey Report') [annexes not attached].
- Legal Report by Colonel R.A. Brown Headquarters Training Command - Army on the Toohey Report (dated 22 September 2003, no reference).
- Minute from the appointing officer to the Chief of Staff, Headquarters Training Command - Army, recording the appointing officer's decisions and recommendations on the Toohey Report and referring those recommendations which were beyond the appointing officer's

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authority to implement (dated 15 October 2003, Reference 2003/16531/1 B1 HQTC/OUT/2003/2101).

- Minute from the Acting Commandant, Headquarters Training Command - Army, to the Chief of Army, referring to the Chief of Army those recommendations which were beyond the authority of the Commandant to implement (dated 30 October 2003, Reference 2003/16531/1 E4/HQTC/OUT/2003/987).
- Minute from the Chief of Army to the Chief of the Defence Force referring to the Chief of the Defence Force those recommendations that were beyond the authority of Army (dated 5 December 2003, Reference OCA/OUT/2003/1929).
- Preliminary comments on Captain Toohey's Report by a TDLS legal officer attached as observations to counsel (Reference 2003/74385 DAL 503/2003).

QUESTION 31

Lieutenant Colonel Collins's Letter to the Prime Minister

Senator Evans

Hansard: page 79 (Tuesday 1 June 2004)

On what date did the Chief of Army receive Lieutenant Colonel Collins's letter to the Prime Minister?

RESPONSE

19 March 2004.

QUESTION 32

Advice to Training Command Commanding Officer on the Review of the Toohey Report

Senator Evans

Hansard: page 85 (Tuesday 1 June 2004)

What was the role of Lieutenant Colonel Tina Mathewson, the chief legal officer in Training Command, in the review of the Toohey Report? Did Lieutenant Colonel Mathewson provide written advice? If so, to what was the advice related?

RESPONSE

Lieutenant Colonel Mathewson played no role in the review of the Toohey Report. Lieutenant Colonel Mathewson's role was to identify a person who could carry out the investigation. Lieutenant Colonel Mathewson provided no written or legal advice in relation to the Toohey Report.