

## Chapter 2

### Participation and knowledge of Australian personnel in questioning Iraqi detainees

2.1 This chapter deals specifically with the involvement of Australian personnel in the interrogating or interviewing of persons detained in relation to the war in Iraq. To start with, it examines the policy framework within which Australian personnel serving in the Iraqi Survey Group (ISG) operated in Iraq. Personnel in this group were the most likely Australians in Iraq to be engaged in questioning Iraqi detainees. The chapter looks specifically at the concept of operations and the stated duties of senior analysts working in the ISG. It then determines whether Australian personnel were involved in interviewing or interrogating Iraqi detainees.

#### The Iraq Survey Group (ISG)

2.2 The ISG, created in June 2003, performed highly specialised tasks. Australian personnel in this group were deployed to Iraq and 'embedded into teams' within the group. They shared technical intelligence with the UK and US elements and, more particularly, provided 'analytical effort to the locating, identification and elimination of Iraq's weapons of mass destruction (WMD)'.<sup>1</sup> Their stated mission was to:

...identify, account for and eliminate WMD, WMD weapon delivery systems and associated technology in conjunction with US and UK forces.<sup>2</sup>

2.3 Mr Charles Duelfer, Special Adviser for WMD in Iraq, briefly summarised the activities undertaken by the ISG:

We do not just look for stockpiles of weapons that could be hidden in the country. It is the mission of the ISG to determine all that was potentially being done related to WMD and the delivery systems for WMD. In addition to site exploitations for weapons, ISG has conducted debriefings of former Iraqi regime officials, examined research and production facilities, and evaluated documents recovered from the regime. Special focus has been given to the senior leadership figures captured after the war.<sup>3</sup>

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- 1 Defence Intelligence Organisation, OP Falconer—Concept of Operations for Australian Defence Force Participation in the Iraq Survey Group, para. 4, attachment to answers to questions on notice, Question no. 1, 2004–05 Additional Estimates, 16 and 18 February 2005.
  - 2 Defence Intelligence Organisation, OP Falconer—Concept of Operations for Australian Defence Force Participation in the Iraq Survey Group, para. 14, attachment to answers to questions on notice, Question no. 1, 2004–05 Additional Estimates, 16 and 18 February 2005.
  - 3 Testimony to the US Congress by Mr Charles Duelfer, Director of Central Intelligence Special Advisor for Strategy regarding Iraqi Weapons of Mass Destruction (WMD) Programs, 30 March 2004.  
[http://www.odci.gov/cia/public\\_affairs/speeches/2004/tenet\\_testimony\\_03302004.html](http://www.odci.gov/cia/public_affairs/speeches/2004/tenet_testimony_03302004.html) (1 July 2005).

2.4 He explained further:

ISG's initial strategy was to examine sites associated with the former WMD programs or sites suspected of involvement. Some regime figures were captured and interrogated. Some documents were recovered.

As site exploitations revealed WMD was not stored or produced at the primary known or suspect sites, the ISG moved to a strategy of finding and debriefing higher-level and mid-level scientists and engineers and military officers. Senior regime officials were debriefed. Site exploitations continued, and an interim report was provided last fall.<sup>4</sup>

2.5 This description of the work of the ISG clearly anticipated the likelihood that those in this group would be involved in the 'interrogation' or 'debriefing' of Iraqi detainees. The following section looks at the stated policy governing the activities of Australian personnel deployed in Iraq with the ISG.

### **Concept of operations**

2.6 The key document applying to Australians serving in the ISG was the Concept of Operations. Brigadier Steve Meekin prepared this document in April 2003 before the deployment of Australian personnel to the ISG. It set out the role and related matters, including some restrictions, on how they could do their business. Specified tasks for the Australian contingent were to:

- assist in the identification of WMD, their delivery means and associated technology;
- collect battlefield intelligence on captured and abandoned Iraqi equipment that may relate to WMD;
- share technical intelligence with UK and US forces in the ISG;
- ensure that the government of Australia is informed et cetera;
- arrange for the recovery of selected items of material; and
- coordinate reach-back arrangements for harnessing the support of other agencies.<sup>5</sup>

2.7 Senator the Hon Robert Hill, Minister for Defence, noted in particular that this document imposed limitations such as the restriction 'that Australian personnel are not to participate in interrogation'.

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4 Testimony to the US Congress by Mr Charles Duelfer, Director of Central Intelligence Special Advisor for Strategy regarding Iraqi Weapons of Mass Destruction (WMD) Programs, 30 March 2004.  
[http://www.odci.gov/cia/public\\_affairs/speeches/2004/tenet\\_testimony\\_03302004.html](http://www.odci.gov/cia/public_affairs/speeches/2004/tenet_testimony_03302004.html)  
(1 July 2005).

5 *Committee Hansard*, 16 February 2005, p. 62.

2.8 Brigadier Meekin told the committee that in drawing up the document he had 'very clear' guidance that personnel were 'not to be involved in interrogation' and that this advice is reflected in the document. Indeed, the Concept of Operations states explicitly that:

...personnel will not be involved in the interrogation of Iraqi prisoners but will concentrate their efforts in the Discovery and Exploitation of WMD as part of the Sensitive Site Exploitation and the full accounting and subsequent elimination of Iraq's WMD.<sup>6</sup>

2.9 According to Brigadier Meekin, he subsequently issued oral guidance along the same lines to his subordinate contingent commander, who in turn conveyed the same message through his group orders to his contingent.<sup>7</sup> He summarised the process:

The guidance was, first, that original concept of operations that I prepared before deployment and, second, through instructions from their superior headquarters, headquarters Joint Task Force 633, the senior Australian headquarters in Iraq, located in Baghdad.<sup>8</sup>

2.10 Mr Michael Pezzullo, Head Coordination and Public Affairs, Department of Defence, supported Brigadier Meekin's account of how the content of the Concept of Operations was conveyed to personnel in the field. He told the committee:

Each contingent commander deployed with instructions that he promulgated to his troops and to public servants. It was up to each contingent commander to translate the higher intent down the line, as is the tradition and form in the Australian military. Most of them did that by word

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6 Defence Intelligence Organisation, OP Falconer—Concept of Operations for Australian Defence Force Participation in the Iraq Survey Group, para. 2, attachment to answers to questions on notice, Question no. 1, 2004–05 Additional Estimates, 16 and 18 February 2005. Other stipulations included that the commitment was for 'a period of approximately six to eight months but that this could be extended' and that the Australian contingent should not operate without ISG force protection measures being implemented. *Committee Hansard*, 16 February 2005, p. 62.

7 *Committee Hansard*, 16 February 2005, p. 62.

8 *Committee Hansard*, 16 February 2005, p. 63.

because they were reasonably small parties. They literally gathered them in rooms—that certainly was the experience with team 1.<sup>9</sup>

2.11 Brigadier Meekin explained, however, that interviewing and debriefing 'were not explicitly ruled out, largely on the basis that part of the role of the Iraq Survey Group was to find out about the weapons programs of the former regime'. It was accepted that members of the ISG would, as part of their duties, interview former senior officials of those weapons programs. 'Indeed, some of the publicly released ISG documents mention that task as a key part of the strategy'.<sup>10</sup> Brigadier Meekin understood that not all Australian personnel in the group would be involved in the interviewing process. He stated that 'a very small number of subject matter experts with a deep understanding of perhaps biological or chemical weapons were the ones most likely to be involved'.<sup>11</sup>

2.12 Mr Rod Barton, an Australian senior analyst with ISG, was such an expert. He was in team 2. According to Mr Pezzullo, however, the head of this team was deployed in mid–November before Mr Barton arrived and left in mid–May after Mr Barton had returned to Australia.<sup>12</sup>

2.13 Mr Pezzullo described at length how those in team 2 were instructed. He explained that the head of team 2 conducted a personal briefing 'plus a reiteration through his chain of command'. This instruction, based on the CDF's general instruction, directed that 'Australian Iraq Survey Contingent members were not to be involved in interrogations, were only to be involved in debriefs of Iraqi personnel voluntarily offering information and were to be involved in these debriefs in their capacity as subject matter experts...providing technical advice in their area of

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9 He elaborated on this process: 'The standard process seemed to be that three different lieutenant colonels adopted slightly varying command procedures, but they seemed to all cluster in a room at the start of the deployment during what the military would call their force preparation time. They seemed to have a collective discussion about it with very clear enunciation either through PowerPoint slides or the reading out of orders in the commander's notebook'. *Committee Hansard*, 16 February 2005, p. 64. Vice Admiral Shalders added: 'The concept of operations remained in force. The contingent commanders took that concept and applied it in slightly different and expanded ways. You heard in evidence this morning that the third rotation, for example, had slightly different words around the way they were told to do their job but the concept, the governing—...The concept remained the same'. *Committee Hansard*, 16 February 2005, p. 108.

See also Brigadier Meekin who explained that 'The first contingent certainly saw the concept of operations. It was briefed to them in PowerPoint, and I recall a PowerPoint slide that in fact stated the restrictions on interrogation. It might be that subsequent contingents were briefed in the same manner, or were briefed without the benefit of having the words in front of them on a screen'. *Committee Hansard*, 16 February 2005, p. 107.

10 *Committee Hansard*, 16 February 2005, p. 62.

11 *Committee Hansard*, 16 February 2005, p. 62.

12 *Committee Hansard*, 16 February 2005, p. 64.

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expertise to the individual running the debrief.<sup>13</sup> Although intimidated, it is unclear from Mr Pezzullo's explanation whether Mr Barton received such instructions.

2.14 The following section looks at the specific circumstances of Mr Barton's employment and duties in Iraq.

***Duties of senior analyst—Mr Rod Barton***

2.15 Mr Barton was engaged under the Concept of Operations. He had an employment relationship with the International Policy Division of the strategy group of the Department of Defence and was engaged for the purposes of public sector employment.<sup>14</sup> He was employed in the context of his ISG deployment as a non-ongoing employee under three separate contracts that were not completely continuous. They covered the following periods:

- 8 December 2003 to 23 March 2004—Iraq;
- 29 August to 17 September 2004—London and Iraq; and
- 2 October to 11 October 2004—Washington and New York.<sup>15</sup>

2.16 While operating under the general requirements of the Geneva Convention and the Concept of Operations, Australians working in the Iraqi Survey Group were also under instructions particular to their duties as members of this group. Brigadier Meekin explained:

A number of the people that were involved, subject matter experts, are either members of the ADF or members of the Australian Public Service, and as such they did not have a specific duty statement. They were assigned to a particular part of the Iraq Survey Group, and it is from that part that they received their instructions on what they were to do. They were to perform those instructions, provided that they were not in conflict with guidance that had previously been provided from documents such as my concept of operations, that we have previously mentioned, and subsequent guidance provided by contingent commanders. In other words, they were not to be involved in interrogation of enemy prisoners of war or high-value detainees.<sup>16</sup>

2.17 Mr Barton's stated duties were to:

- be a member of the Iraq Survey Group senior advisory group;
- operate as a command team leader of the Iraq WMD elimination mission;

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13 *Committee Hansard*, 16 February 2005, p. 64.

14 *Committee Hansard*, 16 February 2005, p. 53.

15 *Committee Hansard*, 16 February 2005, pp. 53–54.

16 *Committee Hansard*, 16 February 2005, p. 107.

- direct WMD related efforts as required;
- direct the analysis and targeting of exploitation operations;
- direct, plan, and assist, where appropriate, in the interviewing of scientific and high-value Iraqi personnel;
- if needed, assist in the conduct of exploitation operations in the field;
- prepare planning documents, mission assessments, recommendations and other similar documents as required.<sup>17</sup>

2.18 The duty statement clearly anticipated that Mr Barton could be involved in interviewing Iraqi detainees. Indeed, he told the committee that he questioned Iraqi detainees and further that he knew of other Australians who had also been involved in similar activities. Although he did not see Australians involved in interviews, Mr Barton argued that:

Because I was a senior person within the ISG, I had regular briefings on what was going on. I read the reports that came out of the questioning, and I was aware that other Australians were involved.

Perhaps they would not do quite what I did because I had more experience than they had and I was senior, but they would sit in on interviews, they would ask questions.<sup>18</sup>

2.19 It is clear that the Concept of Operations mentioned by Brigadier Meekin applied to Mr Barton as an Australian contracted by Australia to work with the ISG.<sup>19</sup> However, on more than one occasion Mr Barton has insisted that he was not briefed on the Concept of Operations, let alone involved in any discussion on the difference between interrogation and interviewing.<sup>20</sup> He told the committee that he knew nothing about the CDF's executive orders; received no instructions; and was 'certainly ignorant of the concept of operations'.<sup>21</sup> Moreover, he was under the impression that others in similar positions were also not informed about the Concept of Operations. He told the committee:

I am not aware of it happening in any other case. As I said, I had a colleague who was employed with an almost identical duty statement to mine—I think it was actually identical. He was not briefed on this either or given any instruction.

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17 *Committee Hansard*, 16 February 2005, pp. 58–59.

18 *Committee Hansard*, 29 March 2005, p. 30. The Minister stated further that 'Australians working there, whether they be military or official, had to operate within our rules. These rules were clear, they were briefed to these individuals and I assume the individuals followed their instructions'. *Committee Hansard*, 16 February 2005, p. 112.

19 *Committee Hansard*, 16 February 2005, p. 114.

20 *Committee Hansard*, 29 March 2005, pp. 5 and 21.

21 *Committee Hansard*, 29 March 2005, pp. 20–21.

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I had no Defence guidance. In fact, as I pointed out, I returned to Iraq in September and still no-one had given me any instruction when I went back.<sup>22</sup>

2.20 The Department of Defence and the Minister for Defence stand by their assertions that Australians were under clear instructions not to interrogate Iraq detainees and in fact to their knowledge none did so.<sup>23</sup> Brigadier Meekin stressed that Australian personnel in Iraq were under instructions to withdraw if an interrogation was being conducted or if they became part of an interrogation and to report the circumstances to their contingent commander.<sup>24</sup> He stated further:

The guidance that was provided to our people in Iraq—and this particularly applies to a small number of people who are subject matter experts—was that, in their involvement in an interview, it was to be a compliant situation. In other words, the interviewee had to agree to participate, there was to be no duress, it certainly was not to be an interrogation and, indeed, they were to withdraw from that situation if it was an interrogation or appeared to them to be an interrogation.<sup>25</sup>

2.21 The Minister for Defence had a definite understanding of what constitutes an interrogation. He maintained that there is a clear distinction between interrogation and debriefing or interviewing. He stated 'one is a voluntary act, and one is obviously under a certain amount of duress'.<sup>26</sup>

2.22 Mr Barton disputes the Minister's and Defence's interpretation of interrogation. He stated that he had his own understanding of what constitutes an interrogation and that it was a layperson's understanding. He stated that he was quite angry about the Minister's statement that 'Australia did not interrogate prisoners'. According to Mr Barton, when he contacted Defence about the statement, it responded by saying, 'Well, we regard that you did interviews and not interrogations'.

2.23 In answer to a question without notice, the Prime Minister told the House of Representatives that Mr Barton was not a qualified interrogator. He stated further 'I don't know whether he's had any exposure to the interrogation process. But it's quite

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22 *Committee Hansard*, 29 March 2005, pp. 5–6, 8, 20 and 34.

23 For example see Transcript, Senator the Hon Robert Hill. Interview with ABC *PM* Program, 15 February 2005. The Minister stated that 'Right from day one when we sent the ISG to Iraq, they went under written orders that they were not permitted they participate in interrogation. Those orders were translated by the Lieutenant Colonels who were in charge of each of our three rotations and they reported back that Australians did not interrogate'.

24 *Committee Hansard*, 16 February 2005, p. 106.

25 *Committee Hansard*, 16 February 2005, p. 106.

26 Transcript, 'Minister confirms his earlier claim that no Australian members of the ISG were involved in interrogating Iraqi prisoners', *AM*, 16 February 2005.

common for people with no understanding of the process, or little understanding of the process, to misunderstand the things they see and the safeguards employed'.<sup>27</sup>

2.24 Contrary to the above views, Mr Barton was of the opinion that:

An interview is between equals, and someone was brought to me in an orange jumpsuit with a guard with a gun standing behind him and, all right, you call it what you wish, but I think it's misleading. I believe it was an interrogation. The Iraqis regarded it as interrogation...the Americans I think regarded it as interrogation.<sup>28</sup>

2.25 In referring to the detainees at Camp Cropper, he stated that they were all prisoners of war and had little choice in whether they were going to participate in this questioning. He stated:

the prisoner who was brought to me really had no choice about whether he was brought there, there was coercion in certain forms, there was always a threat of force. As I mentioned, some of them had been beaten before they got to Cropper, so there was always that implied force.<sup>29</sup>

2.26 Mr Barton, however, told the committee that he did not see any abuse and noted that the process of questioning detainees at Camp Cropper was 'normally cordial'.<sup>30</sup>

2.27 Mr Barton's view is supported by Dr David Kay, first Senior Advisor to ISG, who maintained that he would not make a distinction between an interview or an interrogation. He stated that he would tend to say that he had an interview or discussion with detainees and although he did not often use the word interrogation 'that's what it was'. He assumed that anyone 'that was in a room with a prisoner was engaged in interrogation. You weren't playing bridge, and so you had to play by the rules that were established for interrogation'.<sup>31</sup> Mr Duelfer also used both terms 'debriefing' and 'interrogation' when describing the work of ISG (see para. 2.4).

### ***Committee view***

2.28 In addressing term of reference (a), the committee finds that there were some Australian personnel present, or who had duties which included being present, during the questioning of persons detained in relation to the war in Iraq. Given that those interviewed were being forcibly detained, the meaning of the terms 'interview' and

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27 Answer to question without notice, House of Representatives, *Hansard*, 17 February 2005, p. 82.

28 Transcript, *Four Corners*, 14 February 2005, p. [11].

29 *Committee Hansard*, 29 March 2005, pp. 20–21.

30 *Committee Hansard*, 29 March 2005, pp. 24,29.

31 Transcript, 'Prime Minister defends Minister over interrogation issues raised by former Iraqi weapons inspector', *PM*, Thursday, 17 February 2005. See also comment by Mr Alan Behm, Transcript, *AM*, 16 February 2005.



'interrogation' appear to merge. Indeed, some people, such as Dr Kay and Mr Burton, made no distinction between terms such as 'interview', 'debrief' or 'interrogation' when describing their work in ISG.

2.29 While acknowledging that the debate about what constitutes an interview and an interrogation is important, the committee believes that a far more serious issue warrants consideration. The committee understands that an officer clearly required to interview Iraqi detainees was apparently not instructed on the Concept of Operations. As noted earlier, the Concept of Operations states explicitly that 'personnel will not be involved in the interrogation of Iraqi prisoners'. It is concerned that uncertainty surrounds the instructions or advice given to Mr Barton regarding his duties under the Concept of Operations. Defence should have been able to state unequivocally that Mr Barton had been briefed appropriately about this Concept of Operations and had a clear understanding that he was not to participate in interrogations. It did not do so. The Committee can only conclude that the ADF failed in its responsibility to ensure that Mr Barton was made aware of the Concept of Operations and any other obligations he would have toward detainees.

### **Recommendation 1**

**2.30 The committee recommends that the ADF review its procedures for instructing personnel about the various codes of conduct, ADF's instructions or Concepts of Operations governing the conduct of Australian personnel while engaged in overseas operations especially where Australian personnel are deployed with third country operations. All Australian personnel must be made aware of their obligations with regard to human rights issues which includes their obligation to report any activity that seems illegal.**

### **Taking account of the changed circumstances**

2.31 Mr Barton also raised a second point about the principles applying to the handling of Iraqi prisoners by the coalition forces. He was particularly concerned about the status of such captives after sovereignty was returned to Iraq on 28 June. He stated:

I felt, just as the British government did, that any involvement with those prisoners was probably illegal. The British government actually issued an instruction—I do not know whether the Australians did the same thing. I never saw it. I asked but no-one could tell me. But after 28 June—after sovereignty—the British government issued an instruction to all their interrogators that they were not to question the prisoners, not to prepare questions for others, not to help others in preparing for interviews and not even to use the product that came from any other interviews. In other words, after June, with respect to any information that was coming out of there, the British government wanted nothing to do with it.

I do not know what the Australian policy was. I asked at the time, but I decided, too, that I felt that the prisoners probably were being held illegally now and that I was going to absent myself from it. When I said, 'I cannot do the interview', it was put to me, 'Well, perhaps you can write some

questions for some others.' I said, 'No, I can't do that either', and I was not forced any further. They said, 'Okay, right, I understand'.<sup>32</sup>

2.32 He sought clarification from the commander of the Australian contingent at the ISG on his understanding of the status of prisoners. According to Mr Barton, the commander was unsure and did not know what the policy was. Mr Barton also raised the question with officials on his return home:

I did a debrief with the Iraq task force and I raised the same issue with them: what was the Australian policy? I did not get an answer then either. I do not even know whether we had a policy after June. I know—or at least, I was told by the lieutenant colonel—that we had stopped questioning prisoners, but whether we had any involvement after June I do not know.<sup>33</sup>

### ***Committee view***

2.33 The committee is concerned that ADF personnel in Iraq were unclear about Australia's position on the handling of prisoners after Iraq gained its sovereignty.

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32 *Committee Hansard*, 29 March 2005, p. 33.

33 *Committee Hansard*, 29 March 2005, p. 33.