

Chapter 3

Knowledge of the treatment of Iraqi detainees

3.1 The committee in this chapter seeks to ascertain whether any knowledge of, or concerns regarding, the treatment of Iraqi detainees was provided to Australian Government departments, agencies and ministers and, if so, the actions that followed from the provision of this information. The committee looks at:

- the policy that is intended to inform Australian personnel in Iraq about their conduct toward Iraqi detainees;
- the key documents which enunciate the fundamental principles governing the handling of prisoners—the Geneva Convention and the CDF's directive;
- the evidence presented to the committee about the provision of information on the treatment of Iraqi detainees to Australian government departments, agencies and ministers; and
- the actions taken following such reporting.

Australian policy toward the treatment of detainees in relation to the war in Iraq

3.2 From the very beginning of Australia's engagement in Iraq in March 2003, many people and organisations sought clarification on Australia's duties and obligations toward Iraqi prisoners. On 21 March 2003, Brigadier Mike Hannan told a media gathering that Australia had:

...a very robust system which ensures that...our Australian rules of engagement and orders to our troops required the compliance with all of our international conventions, with all of our international agreements with Australian law and with international law and the law of armed conflict.¹

3.3 This was one of the first of numerous assurances given by senior ADF officers that prisoners of war would be treated in accordance with international protocols.²

1 Transcript, 'Update on the Australian Defence Force's Contributions to Global Operations', 21 March 2003, interviewee Brigadier Mike Hannan.

2 See for example, Transcript, 'Media Briefing Australia's contribution to Operation Falcon', 9 April 2003. On 2 May 2003, he explained in greater detail Australia's stand on the treatment of prisoners. He noted that right from the earliest planning for this operation, prisoners of war were 'an important consideration'. He stated:

'Because the Coalition essentially of the US, the UK and Australia had differing legal obligations in terms of the conventions that they'd signed, this was a matter of negotiation between the three countries an agreement was reached between the three countries that the handling of PWs would be in accordance with the obligations of the countries with the strictest responsibilities, and that was of course the UK and Australia.'

3.4 The following section discusses two documents that set down the principles under which Australian personnel are to treat prisoners of war.

The Geneva Convention

3.5 The Geneva Convention is a collection of laws of war that have been assembled piecemeal over many years and which continues to be developed. Convention III and IV apply directly to the treatment of prisoners of war and the protection of civilian prisoners in time of war. The overriding principle for both conventions is that such persons 'shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion, or faith, birth or wealth, or any other similar criteria'. The conventions also prohibit certain acts including:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; and
- outrages upon personal dignity, in particular, humiliating and degrading treatment.

3.6 Australia is a signatory to both conventions. Any policy statement, code of conduct or rules of engagement must be consistent with the overarching principles contained in this document.

CDF's directive regarding the policy governing the handling of captives

3.7 Australia also has a memorandum of understanding with the US on the treatment of detainees that was initiated in 2002 at the time of the war in Afghanistan. General Peter Cosgrove explained that it was necessary to have this arrangement to cater for the possibility that Australian special forces operating in Afghanistan might need 'to detain people in a formal sense: that is to detain them for a period of time'. According to General Cosgrove:

The arrangement was reached through an exchange of letters between Admiral Barrie and General Franks of the Central Command. They stated the position that if the United States personnel were present with Australian personnel, the United States military person could effect the capture,

So when the operation was put together, specialist troops were designated for the purpose of managing PWs, and those troops were properly prepared and trained to deal with the PWs in accordance with the regulations.

For Australia's part, of course, we handle and treat all prisoners of war and all detainees in accordance with the Geneva Conventions, and we have every expectation that in accordance with the agreements we've made the other coalition partners would also abide by those regulations rigidly'.

See also Transcript Australian Media Briefing: Operation Falconer, Brigadier Mike Hannan, 2 May 2003.

assisted by the Australians, and that would mean that the person thus captured was in the custody of the United States.³

3.8 In June 2002, following consideration of advice from the Attorney-General's Department, the then CDF, with a view to ensuring that the ADF's conduct was consistent with Australia's legal obligations, issued an ADF policy regarding the handling of captives taken in Afghanistan. The policy was that the United States was to assume responsibility for captives taken during combined Australia–United States operations. The ADF would retain custody of those captives taken during separate ADF operations, thereby allowing the government to make decisions as to the future handling of those captives.⁴

3.9 The committee understands that there was no separate or new directive issued with regard to the engagement of Australian personnel in Iraq. Senator Hill explained:

Operation Slipper continued and many of the forces were dually assigned, if that is the right term, and that covers the ships. In relation to the special forces, under the next operation they continued to operate on the same basis. As far as I have been able to ascertain there was no new directive given. There was a continuation of the implementation of the arrangement that had been reached the previous year with the United States.⁵

3.10 There can be no doubt that Australians serving in Iraq are bound in their treatment towards captives by the Geneva Convention and by the CDF's directive. Both documents make clear that captives must be treated humanely and secondly that the US was to assume responsibility for captives taken during combined Australia–US operations.

3.11 The following section traces the reporting procedures followed by Australian personnel in Iraq on the treatment of Iraqi prisoners—whether they knew about alleged abuses, whether they reported them, and if so, to whom, and finally what action, if any, was taken.

Situation reports (sit reps)

3.12 The evidence before this committee suggests that Australian officials first became aware of concerns about the treatment of Iraqi detainees through information conveyed in situation reports provided by a legal officer, Major O'Kane, stationed in Baghdad. In one report dated 28 November 2003, he recorded that he had reviewed reports by the International Committee for the Red Cross (ICRC) on detention facilities and was preparing a position paper.⁶

3 *Committee Hansard*, 17 June 2004, p. 10.

4 *Committee Hansard*, 17 June 2004, p. 12.

5 *Committee Hansard*, 17 June 2004, p. 12.

6 *Committee Hansard*, 31 May 2004, p. 78.

3.13 A later sit rep, dated 4 December 2003, noted that HQ had provided vehicle support for Major O'Kane to visit Abu Ghraib jail. This report indicated that Major O'Kane had attended the prison to address issues of mistreatment allegations and had drafted a reply to the October ICRC report.⁷

3.14 On 15 February 2004, Lieutenant Colonel Muggleton recorded in a sit rep that the ICRC report had been given to Ambassador Paul Bremer and that it was highly critical of the treatment of prisoners. He also noted that US authorities were investigating the abuse allegations, including the detention system in Iraq.⁸

3.15 Although produced in February 2004, the ICRC report referred to by Lieutenant Colonel Muggleton was not made public until May 2004. It should be noted that the ICRC keeps its reports strictly confidential. The report was published in May without the ICRC's consent and in contravention of an established and well recognised practice.⁹ The ICRC made plain that:

...the ICRC fulfils its mandate to protect persons detained in armed conflict by addressing problems and violations through private approaches to the detaining authorities and their superiors. This long-standing practice allows us to act in a decisive manner, while ensuring that our delegates have continued access to detainees around the world.¹⁰

3.16 The ICRC report summarised a series of working papers handed over to coalition forces and was based on visits to various facilities between March and November 2003. The sit reps of 28 November and 4 December 2003 appear to refer to the October working paper. The February report described violations of International Humanitarian Law by the Coalition Forces in Iraq. It found that the main places of internment where mistreatment allegedly took place included battle group unit stations; the military intelligence sections of Camp Cropper and Abu Ghraib Correctional Facility and other named places.¹¹

3.17 The situation reports from Major O'Kane and Lieutenant Colonel Muggleton that contained references to either the ICRC working papers or the February report were provided to a number of addressees in Canberra, to Headquarters Joint Task Force 633 and to the Australian Representative Office (ARO) in Baghdad. According to Air Commodore Harvey, they were also 'onforwarded to other government departments, including Attorney-General's and DFAT, because they were obviously

7 *Committee Hansard*, 31 May 2004, pp. 52–53, 61 and 73–74.

8 *Committee Hansard*, 31 May 2004, p. 120.

9 The ICRC President Jakob Kellenberger, Press Release, 04/35, *Report by the ICRC on the coalition forces' treatment of persons in Iraq*, 7 May 2004.

10 The ICRC President Jakob Kellenberger, Press Release, 04/35, *Report by the ICRC on the coalition forces' treatment of persons in Iraq*, 7 May 2004.

11 ICRC, *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions during Arrest, Internment and Interrogation*, pp. [13, 17–18].

interested in monitoring what was happening within the Coalition Provisional Authority'.¹²

3.18 The committee has not been provided with copies of these sit reps and relies on the evidence of departmental officials to piece together their contents and their distribution. Based on the evidence, it would seem that officials within the Department of Defence did not act upon these reports which indicated that Iraqi detainees may have been mistreated.

3.19 DFAT, however, sought clarification. Mr John Quinn, Assistant Secretary, Iraq Task Force, told the Committee that the ICRC report about the treatment of detainees in Iraq came to DFAT's attention on 15 February 2004 when an Australian legal officer made reference to it in a situation report numbered 13 [Lieutenant Colonel Muggleton's sit rep]. Mr Quinn confirmed, as noted above, that the sit rep stated that the ICRC report, described as 'detailed, comprehensive and highly critical', had been given to Ambassador Bremer.¹³ According to Mr Quinn, the sit rep also commented in a 'broad brush way' about US and Australian approaches to detention issues.

3.20 He explained to the committee that he was concerned about the report and put the issue before the legal watch group at a meeting on 26 February 2004. His intention was 'to double check whether there were issues of concern'.¹⁴ He told the committee:

I knew that we were not detaining prisoners and had no role in detention. I had some concerns in relation to the Iraq survey group, so I said, 'Are there any issues here in terms of process we need to be aware of?' A message went through the military chain and through the ARO to check in terms of the Iraq Survey Group whether there were any particular issues that needed to be raised with us. The reply came back: 'No, our Australian colleagues in the ISG are not involved in interrogation or detention processes. There is no issue that we need to be concerned about'. So I guess in my role as sweeper I just raised the issue. I raised a query, it was responded to and my assumption was that the ICRC process was moving forward in the usual way.¹⁵

12 *Committee Hansard*, 31 May 2004, p. 121.

13 *Committee Hansard*, 2 June 2004, p. 76. In February 2005, Mr Chester, reminded the Committee, that Mr Quinn gave testimony during the June 2004 Estimates that, 'when we became aware of Abu Ghraib, he, as head of the Iraq Task Force, had made inquiries of any possible Australian involvement and Australian knowledge of abuse. His testimony... was in relation to him doing a broad trawl of Australians that were in Iraq. He said that, just so he had a complete knowledge, he sought advice from those Australians who were working with the Iraq Survey Group about whether there were any issues that he needed to be aware of in relation to the prisoner abuse allegation'. *Committee Hansard*, 17 February 2005, p. 37.

14 The legal watch group was a sub group of the Iraq Task Force comprising lawyers from Defence, Attorney-General's and DFAT, the task force and at times other colleagues from Defence on the operations or international policy side.

15 *Committee Hansard*, 2 June 2004, p. 59.

3.21 Based on this information, Mr Quinn assumed that the ICRC was 'doing its job'. He was under the impression that the matter was not discussed again and that his colleagues who saw the sit reps took the same judgment.¹⁶

3.22 Mr Quinn also referred to a sit rep dated 21 March 2004 which contained a 'very short reference to the ICRC making negative comments about Camp Cropper'. He noted that no detail was provided but again there was 'affirmation that no Australians were involved in any aspects of breaches of international humanitarian law'. He concluded, 'I guess that is a resonance of the early inquiry that I initiated from this end about whether we had any role in relation to the detainees at Camp Cropper'.¹⁷

3.23 During this period, Mr Barton had been in Iraq [8 December 2003 to 23 March 2004] and had concerns about the treatment of Iraqi detainees. He told the committee that early in 2004, during the regular briefings they had at Camp Slayer, he became perturbed by some photographs he had seen of prisoners taken during the induction process. He stated that 'the nature of the bruising and so on about the face seemed to be more than you would get if you just resisted arrest'.¹⁸ He explained, however, that:

A few of us were concerned, but at this stage, of course, we were not aware of anything that was going on at Abu Ghraib. We just thought that these were perhaps some isolated incidents or that we had not interpreted the evidence correctly.¹⁹

3.24 He also told the committee that:

...some things concerned me—the size and design of cells, the use of privilege to gain cooperation and the extensive use of solitary confinement. I made these concerns known at the time to the commandant of the prison. What was of greater concern to me was the way that some, although not all, prisoners were treated prior to their arrival at Cropper. I saw photographic evidence that I believe indicates that some were beaten shortly after their arrest, possibly as a softening-up process. I also became aware much later of a death in custody that looked suspicious.²⁰

16 *Committee Hansard*, 2 June 2004, p. 62. Mr Quinn stated: I guess our understanding and our assumption was that the ICRC was doing its job. From the tenor of the reporting to that point, there had been close cooperation from the detaining authorities. We had no reason to suspect there was any major difficulty there. Our officers were there to facilitate and overcome problems. From my seat I did not see any particular issues and I can only assume my other colleagues who saw the sit reps took the same judgment.

17 *Committee Hansard*, 2 June 2004, p. 74.

18 *Committee Hansard*, 29 March 2005, p. 7.

19 *Committee Hansard*, 29 March 2005, p. 7.

20 *Committee Hansard*, 29 March 2005, p. 3.

3.25 He had a discussion about prisoners with the Australian Representative in Baghdad during a dinner party on 2 March 2004. It was also attended by the then head of the Iraq Task Force, Mr Quinn, and an ISG colleague, Dr Gee, who resigned at about the same time as Mr Barton. He maintained that during the evening they discussed the issue of the continuing detention of certain prisoners at Camp Cropper.²¹

3.26 When Mr Barton returned to Australia from Iraq in late March he met various officials. On 31 March 2004, he had a meeting with Ms Rowling, First Assistant Secretary, International Policy, and an Air Force Group Captain arising out of his letter of resignation.²² He also talked to a senior Defence official and mentioned his general concerns about prisoner mistreatment.²³ According to Mr Barton, he did not give details about his concerns during these consultations but did make a recommendation that Australia 'should not be involved in the interview process'.²⁴ He stressed that he only mentioned his concern and stated further 'I do regret now not pushing it harder then. Having known what I knew, I should have made more of a case of it, but I thought 'well, I've done my job...'²⁵

3.27 According to the Secretary of the Department of Defence, Mr Ric Smith, there was no follow-up to matters raised at the meeting with Mr Barton for three reasons:

- Mr Barton had only mentioned the matter of Iraqi detainees and he spoke about conditions and mistreatment but not about abuse;
- the meeting was about 'something else rather bigger and more important—the future directions of the ISG'; and
- the main point being made by Mr Barton was, given his concerns about conditions and mistreatment, Australia should not be involved with the taking of detainees but Australia was not taking detainees and hence no action was necessary.²⁶

3.28 When reports of abuse of Iraqi detainees became public in early May 2004, including the publication of the February ICRC report, the Department of Defence provided a brief to the Minister for Defence on ADF personnel and the taking of prisoners. The Minister requested that ADF personnel who could provide information on the matters dealing with the detainment of Iraqi prisoners be interviewed. On the morning of 11 May, the Minister received a second brief which informed him that

21 *Committee Hansard*, 29 March 2005, p. 4.

22 *Committee Hansard*, 18 February 2005, p. 30.

23 *Committee Hansard*, 29 March 2005, p. 3.

24 *Committee Hansard*, 29 March 2005, p. 3.

25 Transcript, *Four Corners*, 14 February 2005, p. [9] and *Committee Hansard*, 29 March 2005, p. 3.

26 *Committee Hansard*, 16 February 2005, p. 84.

legal officers in the Coalition Provisional Authority (CPA) had known about the February Report of the ICRC.²⁷

3.29 That day the Minister's office sought answers to a series of questions on prisons, prisoners, the ADF's role in detention and what, if any, obligations it had.²⁸ A week later, on 17 May, the Minister's office requested that all ADF personnel who had contact with the prison be listed by name and be interviewed by the Defence Legal Service.

May 2004 survey

3.30 The Department of Defence set about identifying and contacting all relevant personnel and forwarding a pro forma questionnaire to them.²⁹ The survey was primarily directed towards identifying people who had contact with prisoners of war and establishing whether they had seen abuse rather than whether they had seen ICRC reports.³⁰

3.31 A list of 302 Australian personnel who might have had some exposure to Iraqi prisoners was refined down to 60 and then to 15. The final 15 were contacted by a small team of senior lawyers who asked targeted questions relating to dealings with prisoners and visits to prisoners.³¹ A third country deployment questionnaire went to 106 third country deployment people, that is personnel who were deployed with third countries, the US and the UK. Of those 106 personnel, 23 were sent the survey.³²

3.32 On 25 May 2004, Mr Barton filled out the questionnaire.³³ In answer to whether he had visited any coalition PW or detainee detention centres, holding facilities, prisons or interrogation cells he wrote that he had two visits only as part of his duties with the ISG:

- 30 December 2003, to interview a former Iraqi senior government official; and
- 10 January 2004 to conduct a familiarisation inspection of Camp Cropper (Secure Interrogation Center for High Value Detainees at BIAP).³⁴

27 *Committee Hansard*, 31 May 2004, pp. 37–39.

28 Answer to question on notice, no. 2, Budget Estimates 2004–2005.

29 *Committee Hansard*, 31 May 2004, p. 42.

30 *Committee Hansard*, 31 May 2004, p. 42.

31 *Committee Hansard*, 31 May 2004, p. 50.

32 *Committee Hansard*, 31 May 2004, pp. 53–54. see also pp. 43–4.

33 *Committee Hansard*, 16 February 2005, pp. 65, 116.

34 Information available on Four Corners web site, 15 February 2005, Questionnaire from the Department of Defence
http://www.abc.net.au/4corners/content/2005/20050214_rodbarton/proforma.htm.

As to the question whether he had heard or observed any mistreatment of Iraqi PWs or civilian detainees whilst he was in Middle East Area of Operations (MEAO), he responded:

I did not observe any mistreatment of detainees at Camp Cropper. However I was concerned about the size of the cells many detainees were kept in (approx 2m x 1.5m), the amount of exercise permitted (Two half-hour periods per day) and the solitary confinement of some detainees. I expressed these concerns to the officer in charge of the facility.

From a British colleague at the ISG I heard of the mistreatment of the detainees during their arrest and for the following day or so. I also saw mugshots of two detainees who were photographed shortly after their arrest and who clearly had abrasions about the face. When the officer in charge of the detention centre was asked why, he responded that these injuries were incurred during the detainees' resistance to arrest.

3.33 In reply to the question regarding what he did and who, if anyone, did he report to, he stated:

I expressed my concerns about the possible abuse of detainees to Australian government officials on my return to Australia at the end of March 2004 and recommended that Australia should not be involved in the interview process.

3.34 Finally in answer to whether he had any other information he considered relevant, Mr Barton wrote:

During my time with the ISG I was aware of two Red Cross inspections of Camp Cropper, in mid-January and early February 2004. The visits were only about two weeks apart, and the head of the detention centre explained that that was because the Red Cross was unhappy about some aspects of the camp. Their concerns included the amount of exercise allowed detainees, and the practice of giving rewards (eg phone contact with families, reading or writing material and small luxuries), in return for information. The second visit was to see if these concerns had been addressed. I do not know whether the Red Cross was satisfied.³⁵

3.35 In Mr Barton's view, he was reporting suspected abuse and told the committee that he never said that he saw it with his own eyes but rather 'saw evidence that strongly pointed to this'.³⁶

35 Information available on Four Corners web site, 15 February 2005, Questionnaire from the Department of Defence
http://www.abc.net.au/4corners/content/2005/20050214_rodarton/proforma.htm.

36 *Committee Hansard*, 29 March 2005, p. 28.

DFAT's activities following the disclosure of abuse of Iraqi detainees

3.36 At this time, DFAT was aware that ADF advisers were seeking information about the role of staff in relation to detainees, but was not involved in the survey.³⁷ When asked whether DFAT had taken any due diligence action after the 10 or 11 May 2004, Mr Quinn explained:

...in a sense, all that we knew was what came through the sit rep channel in terms of the information. I started to look in terms of previous activity and I mentioned the February discussion that I initiated in the legal watch group. So we did some basic housekeeping but we did not see ourselves as a party principal and we felt, given the constraints of the ICRC, we had acted appropriately in not pursuing the ICRC confidential report [see explanation in para 3.14]. We were not a party to that process—this is the February report—and we had no knowledge of the October report or working paper, at all. We did some modest due diligence but I guess we were not engaged in intensive activity at that point.³⁸

3.37 He mentioned, however, that he brought the matter of the treatment of Iraqi detainees back to the legal watch group on 17 May:

We had a discussion about what more could be done in terms of what was appropriate follow-up action. As you know, the government had made clear its concerns in relation to this issue... Defence was doing its due diligence. We thought it might be appropriate for one of our colleagues to go to the pre-departure briefing for the AFP colleagues deploying to Iraq to make sure that human rights issues were covered off in that particular context. We reissued the code of conduct we had given to our civilian advisers when they deployed, which is based on the Public Service code of conduct and it includes the obligation to report any activity that seems to be illegal. We had no knowledge of any reason why the civilian advisers would see anything but we wanted to remind them they had obligations. That was done. So we did a number of housekeeping things to follow up but that was at my initiative. There was no directive for us to do that.³⁹

3.38 Mr Quinn made clear that the main channel for reporting on the treatment of detainees was through the sit reps from the ADF legal colleague in the CPA. He assured the committee that DFAT had checked their cable traffic and also asked the post to confirm their knowledge of these matters. He concluded that:

they have confirmed that the channel of reporting was the sit reps. I think I explained earlier they had no approaches from the ICRC on the subject and there is no separate channel of reporting on the subject that we are aware of.⁴⁰

37 *Committee Hansard*, 2 June 2004, pp. 85–86.

38 *Committee Hansard*, 2 June 2004, p. 85.

39 *Committee Hansard*, 2 June 2004, p. 86.

40 *Committee Hansard*, 2 June 2004, p. 104.

3.39 He also informed the committee that DFAT try to talk to colleagues who have worked at the CPA on their return to Australia. He explained, however, that their strike rate is not 100 per cent—that they 'do miss some colleagues who return but we do try to talk to colleagues on return if we can'.⁴¹

Joint statement on the allegations of abuse of Iraqi detainees

3.40 On 28 May 2004, following the ADF survey, the former Chief of the Defence Force and the Secretary for Defence issued a joint statement on the allegations of abuse of Iraqi detainees. It announced that the ADF had undertaken a survey of ADF and civilian personnel in Iraq whose duties may have involved contact with Iraqi prisoners or detainees. The results of the survey showed that:

- no defence personnel were aware of the allegations of abuse or serious mistreatment before the public report of the US investigation in January 2004;
- none of those surveyed was aware of abuse or serious mistreatment of Iraqi prisoners or detainees, of the nature of recent allegations, during their deployment;
- there were no reports about the abuse or serious mistreatment of prisoners or detainees of the nature of recent allegations made, either through the chain of command or informally;
- ADF officers working in the coalition headquarters and the CPA were aware of the October 2003 ICRC report on detainee treatment;
- Defence investigations to date show there is no record of the existence of the October 2003 report being communicated back to Defence in Australia; and
- Australian officers did report on the existence of the ICRC February 2004 report and the process being implemented by the detaining powers to address its concerns. Australia received neither report.⁴²

3.41 On 31 May, senior ADF officers and the Minister were questioned at length during estimates hearings about this statement. In particular, they were asked about the ICRC October working paper. It should be noted that the Minister declined a request to make available Major O'Kane, who mentioned the ICRC paper in his sit reps, to give evidence before estimates hearings. He did so on the grounds that the hearing 'is not designed to be an interrogation of relatively junior military officers on an individual basis'.⁴³

3.42 In reference to the ICRC reports, General Cosgrove told the committee:

We certainly felt that there was a report; it kept getting referred to. But I direct you to the paragraph which begins, 'Defence investigations to date

41 *Committee Hansard*, 2 June 2004, p. 113.

42 Defence Media Release, 28 May 2004 MSPA, 91.04.

43 *Committee Hansard*, 31 May 2004, p. 25.

show there is no record of the existence of the October 2003 report being communicated back to Defence officials in Australia'.⁴⁴

3.43 Defence officials, however, became aware that Major O'Kane had brought back from Iraq copies of the ICRC working paper and that it was in the possession of a Defence official in Canberra. During hearings on estimates the following week, Mr Ric Smith corrected the joint statement of 28 May. He told the Committee:

I want to say here that our statement of 28 May reflected the best knowledge we had at that time—that is, on the afternoon of 28 May. We were subsequently advised of the existence of two working papers prepared by the ICRC in October and November and told that these working papers had been in the possession of, first, an ADF officer and then another Defence official in Canberra since February and May respectively. We remained unclear through the weekend whether these papers were what has been called the October ICRC report referred to earlier. We became clearer about this during Sunday. Had we known of the existence and the contents of those working papers, any statement that we made on 28 May would have reflected that knowledge. In particular, we would have acknowledged our knowledge of the working papers and we would not have said that no Defence personnel were aware of allegations of serious mistreatment.

Moreover, while it might have been Major O'Kane's understanding that the October working paper—or report, as we erroneously called it—raised general concerns about detainees' conditions and treatment, this is not an understanding that we would have shared or endorsed. Having since seen the working papers, we do acknowledge that the allegations they describe were allegations of mistreatment, serious by any standard, although not apparently the serious or criminal abuses that have subsequently been disclosed.⁴⁵

3.44 It is clear that despite its determined efforts, the ADF had failed to ascertain all the relevant facts about Australian personnel and their knowledge of the mistreatment of Iraqi detainees. This meant that on more than one occasion the then CDF misled the public and the parliament on the ICRC October working paper and caused the Secretary of Defence, under the heavy glare of an estimates committee, to correct the record.

The June 2004 fact-finding team

3.45 Following the estimates hearing in May and June 2004, a fact-finding team was commissioned on 2 June to undertake a thorough search of all information relevant to the matter of Iraqi detainees. Mr Pezzullo was appointed to lead the team in the Australian Defence Organisation (ADO). It was to:

44 *Committee Hansard*, 31 May 2004, p. 47.

45 *Committee Hansard*, 1 June 2004, pp. 54–55.

Gather all relevant facts and information concerning ADO involvement in any manner whatsoever in relation to detainee issues arising out of coalition activities in Iraq, from the commencement of the post-conflict phase in May 2003.⁴⁶

3.46 A team of 12 was taken off-line to work on the task but were assisted by 'literally the entire department'.⁴⁷ Mr Pezzullo explained some of the processes followed by the team:

...we started from almost a zero base just to make sure that we were not missing anything, so in many cases where we have rung or ascertained further amplifying information from those who had responded to the May survey there are not individual records of interview but we have updated the survey database that was referred to in the previous estimates.⁴⁸

3.47 Mr Pezzullo interviewed Mr Barton on 9 June.⁴⁹ They discussed the meeting that Mr Barton had had with government officials on his return from Iraq on 31 March. Mr Pezzullo stated that for completeness he wanted everyone's perspectives and had also consulted others present at that meeting. He quoted from a military officer [an Air Force Group Captain] who recalled the meeting [on 31 March] in the following words:

The meeting was with the senior officer [Ms Rowling] in her office. The meeting was focused on the work he had undertaken with the ISG, his reasons for leaving early and his recommendations for the provision of further support to the ISG, all of which were outlined in his letter of resignation to the first assistant secretary. The detention issue was neither mentioned in the letter of resignation nor raised as a major item at the meeting. Mr Barton mentioned that, as part of the process of gathering information, however the ISG was involved in interviews with Iraqis. He said he had personal concerns about the conditions—for example, the size of cells in which the detainees were held—and had heard from British colleagues of mistreatment. For that reason and with no further detail he recommended that Australia not offer to become involved in the detention

46 RC Smith and PJ Cosgrove to Mr M Pezzullo, 2 June 2004, Tabled documents, 17 June 2004. Mr Pezzullo was directed: to draw attention immediately to any matter which suggests that incorrect advice may have been provided to Government; to advise immediately in the event that he had concerns that any ADO personnel may have been involved in the mistreatment of detainees in Iraq; and to provide a full report as soon as possible to enable the minister to be briefed by 11 June 2004.

47 They reviewed Hansard material, re-examined the sources of the briefing behind the Senate Legislation Committee (SLC) packs and the survey data. The ministerial services people conducted a sweep through the Strategic Operations Division of ministerial submissions. A sweeper email was sent requesting information on the broad matter of detainee. Some people came forward and amplified some of their statements. *Committee Hansard*, 17 June 2004, pp. 43–44.

48 *Committee Hansard*, 17 June 2004, p. 51.

49 *Committee Hansard*, 16 February 2005, pp. 74, 84 and 29 March 2005, pp. 12, 14–15.

process. As it was our policy position that we were not considering involvement in a detention process, his recommendation was accepted and noted without further comment and the meeting moved on to other issues.⁵⁰

3.48 Mr Pezzullo also spoke to Ms Rowling on or about 11 June about the 31 March meeting.

3.49 It should be noted that in his interview with Mr Pezzullo on 9 June 2004, Mr Barton raised an additional matter that had not been disclosed to the Department of Defence earlier. Mr Pezzullo explained that, although Mr Barton originally thought the death of Dr Muhammad Munim al–Azmerli suspicious at the time, Mr Barton now had 'reason to believe that the causes of death, based on some media reporting... might in fact have involved traumatic and violent action'. Mr Barton explained further to the committee:

I do not have proof that the man was beaten to death but he did die under suspicious circumstances and I believe that should be investigated. I think that calls for an investigation. I am just saying it is suspicious. But he was not on the list of those that were being investigated.⁵¹

3.50 A report based on the results of the fact–finding team was presented to the Minister on Friday, 11 June, with supplementary material delivered on the Sunday. Senator Hill explained that at the time there were two different tasks:

One was a task set for Mr Pezzullo by the secretary, which resulted in a brief to me, which people have been referring to. That was basically an information gathering and collating exercise. The second task, which was one that was given to me by the Prime Minister, was to inform the Senate of a number of different matters, as specified by the Prime Minister. I had to interpret that and satisfy myself that the statement that I was going to make—what I did was add to the questions that I had answered on 11 May—met the Prime Minister's requirements. So there is an element of overlap in that regard.⁵²

3.51 Mr Barton's interview was not included in the report. Mr Pezzullo stated: 'the secretary and the CDF signed a covering ministerial advice on the 11th and we worked flat chat to make sure that all the supplementary documents were appended...on the 14th at the latest'.⁵³

3.52 On 16 June, the Minister, in providing additional information to questions asked in the Senate on 11 May, made clear that Defence had thoroughly reviewed the information available to it and had confirmed the following three key facts:

50 *Committee Hansard*, 16 February 2005, p. 77.

51 *Committee Hansard*, 29 March 2005, p. 38.

52 *Committee Hansard*, 17 June 2004, p. 72.

53 *Committee Hansard*, 16 February 2005, p. 145.

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- Australia did not interrogate prisoners;
 - Australia was not involved in guarding prisoners at the Abu Ghraib prison or any other Iraq prison; and
 - Australia was in no way involved in perpetrating the acts of abuse against Iraqi prisoners we have seen in photos in the media.⁵⁴

3.53 Mr Pezzullo dictated or drafted out in longhand the record of the interview with Mr Barton about 11 June and about the 12th or the 13th circulated it to very senior officers. It was consistent with the answers given in the survey return of 25 May except for the new matter in the form of a 'note for file' dealing with the death in custody of Dr Azmerli.⁵⁵

3.54 The record of interview was provided to Mr Barton on 17 June. According to Mr Barton 'there were some things that I felt were missing from that record, including the fact that I had reported the abuse to the defence department in March'.

3.55 Mr Barton rang Mr Pezzullo on 17 June to voice his annoyance with Senator Hill's statement of the previous day. He told the committee that although he does not get angry very often:

I rang him because I was annoyed with Senator Hill's statement that we had not been involved with interrogations. In fact—putting that aside, as it is the lesser of the matters—I said to him that I was also not happy that he had not referred to my reporting of prisoner abuse, which I had first reported back in March that year and then given the full testimony on 9 June to Mr Pezzullo; he had not referred to that prisoner abuse that I had referred to.⁵⁶

3.56 Mr Barton said that he talked with Mr Pezzullo about the reference to Abu Ghraib and that there was no reference to Camp Cropper. He stated:

But I said the whole implication of that statement was that we had nothing to do with the prisoners. The words could have been carefully selected to refer only to Abu Ghraib, and there was another place where it referred to ADF or something. I said, 'In my view, that was misleading when I have provided you with this information'. That is when he said, 'I will talk to the minister and let him know your views'.⁵⁷

54 Question without notice (speech): Iraq: treatment of Prisoners, Senate *Hansard*, 16 June 2004, p. 23939.

55 *Committee Hansard*, 16 February 2005, pp. 116, 130, 143–144.

56 *Committee Hansard*, 29 March 2005, p. 14.

57 *Committee Hansard*, 29 March 2005, pp. 14 and 15.

3.57 Mr Pezzullo noted that Mr Barton did not amend the term 'interview' which from his 25 May questionnaire is repeated in his June statement of interview.⁵⁸

3.58 Based on interviews with Mr Barton, Defence, following advice from the Minister, notified the US Ambassador about Mr Barton's concerns particularly the circumstances of Dr Azmerli's death.⁵⁹ According to Mr Smith, the trigger for writing the letter was the concern over whether Mr Barton had knowledge of Dr Azmerli's death in custody and of prisoners who had facial injuries that might be consistent with softening up and interrogation.⁶⁰

3.59 According to Mr Smith, an agent from one of the United States armed forces investigatory units was sent to Australia and he interviewed Mr Barton.⁶¹ Mr Bonighton, Deputy Secretary Intelligence and Security, stated that the investigator came in August [19 August] to interview Mr Barton.⁶²

3.60 On 25 November 2004, Mr Bonighton informed Mr Barton 'about the informal report that [had] been referred to by the investigator as to his interview'. He explained:

I do not think he [Mr Barton] was happy with the way that had gone, because once again we had the problem where the investigator, certainly

58 *Committee Hansard*, 29 March 2005, pp. 12–13, 23–26. Mr Barton told the Committee that there were to be two versions of the record: that he recalled Mr Pezzullo saying that there were going to be two versions of this. 'One version he wanted to pass to the US so that they could follow up and the other one was for internal use. It would be inappropriate, he said, for the external version to have what I reported to the defence department internally and to whom'. Mr Barton annotated and signed the one copy with amendments on 18 June. According to Mr Pezzullo, Mr Barton 'did not think that it recorded properly the fact that he had put certain information to me about his contact with the Australian officials in March'. *Committee Hansard*, 16 February 2005, p. 74.

59 On 21 June 2004, Mr Pezzullo informed Mr Barton that his record of interview would be followed up with the US. [Conflicting dates given by Mr Pezzullo: 21 and 22 June, *Committee Hansard*, 16 February 2005, p. 151; and, *Committee Hansard*, 29 March 2005, pp. 15]. He also sought Mr Barton's 'explicit permission about his cooperation... with any US investigative process that one would assume the US might be minded to take'. *Committee Hansard*, 16 February 2005, p. 151.

On 1 July, Mr Barton received confirmation that a letter had been written to the US Ambassador. On 23 June 2004, a submission was sent to the minister regarding the course of action to be taken in conveying information to the Americans. A formal response from the minister was sent on 25 June 2004. Toward the end of June, Mr Smith wrote to the US Ambassador, Mr Schieffer, after having read the record of Mr Barton's 9 June interview. *Committee Hansard*, 16 February 2005, pp. 84–85 and *Committee Hansard*, 29 March 2005, pp. 3, 15–16.

60 *Committee Hansard*, 16 February 2005, p. 129.

61 *Committee Hansard*, 16 February 2005, p. 84.

62 *Committee Hansard*, 16 February 2005, pp. 152–153. On 12 November 2004, Mr Barton called Mr Bonighton and asked whether anything further had been heard as a result of his interview with the US investigator.

from my understanding, believed that he had no direct knowledge of the events. I think Mr Barton was hoping for something more positive than that to come out of the particular interview'.⁶³

3.61 On 6 July 2004, Mr Pezzullo sent a second letter about a separate concern to Mr Schieffer's deputy, the Deputy Chief of Mission. It related to the awareness on the part of an Australian officer of a possible detention management practice that may have involved the administration of detainees not in accordance with recognised standards.⁶⁴ The committee has no further evidence on this matter.

Committee view

3.62 Evidence shows that at least two Australian officers in Iraq, Major O'Kane and Lieutenant Colonel Muggleton, had been aware of the work of the ICRC with regard to the treatment of Iraqi detainees and had mentioned the October working papers and the ICRC February report in situation reports. The reports were received by a number of officers in Australia.⁶⁵ The committee is not aware of any action being taken with regard to these reports except by Mr Quinn. He sought information on the involvement of members of the ISG and was reassured that Australians in the ISG were 'not involved in interrogation or detention processes'.

3.63 The committee understands that Mr Barton, on at least two occasions, raised concerns with Australian officials about the detention of Iraqi prisoners—on 2 March 2004 with the Australian Representative in Baghdad and other Australian officials and again on his return to Australia at the end of March 2004. According to the evidence, there appears that no action was taken by Government officials present at the dinner on 2 March. In relation to the second occasion, Defence acknowledged that there was no follow-up. It noted that Mr Barton 'only mentioned the matter of Iraqi detainees and spoke about conditions and mistreatment but not abuse'. Mr Barton himself regrets that he did not 'push harder' about the matter.

3.64 It is clear, however, that once the abuse of Iraqi captives became public in early May 2004, the Department of Defence and the Minister took positive steps to establish the role that Australian personnel had had in Iraq with regard to the treatment of Iraqi detainees. Even then, the Department failed to ascertain all the facts and, after intense questioning during an estimates hearing, corrected the information contained

63 *Committee Hansard*, 16 February 2005, pp. 153–154.

64 *Committee Hansard*, 16 February 2005, pp. 89–92.

65 See paragraph 3.16. It explains that the situation reports from Major O'Kane and Lieutenant Colonel Muggleton that contained references to either the ICRC working papers or the February report were provided to a number of addressees in Canberra, to Headquarters Joint Task Force 633 and to the Australian Representative Office (ARO) in Baghdad. According to Air Commodore Harvey, they were also 'onforwarded to other government departments, including Attorney-General's and DFAT, because they were obviously interested in monitoring what was happening within the Coalition Provisional Authority'.

in a joint statement issued by the then CDF and the Secretary of the Department of Defence.

3.65 It was not until June that a fact-finding team was formed in Defence to undertake a thorough search of all information relevant to the matter of Iraqi detainees.

3.66 The committee has had the difficult task of piecing together fragmentary and often incomplete evidence conveyed in most cases through intermediaries lacking first hand knowledge of the incidents under examination. In particular the committee notes that the authors of the situation reports central to its inquiry were not made available to present evidence. It has before it selected quotations from or paraphrasing of key documents.

3.67 The committee accepts that the poor quality of evidence may in part be due to the reluctance of the departments to disclose sensitive information or protect the identity of officers. Even so, it believes that ineffective record keeping, unclear and haphazard reporting processes, and poor communication networks meant that both departments were unable to present a coherent, detailed and accurate account of the matters of concern to the committee. Defence had to undertake a major investigation before it could brief the Minister on whether Australian personnel had knowledge of the mistreatment of Iraqi detainees. It then had to undertake a further investigation because of discrepancies emerging from the first survey.

3.68 The committee is concerned that communication and the reporting processes within the Department of Defence are falling short of that expected of a highly-skilled and professional organisation.