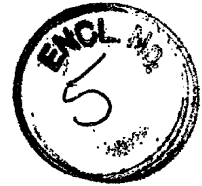


LA11-S

From: PJHQ-J9-LA-S  
 Sent: 04 February 2003 11:08  
 To: PJHQ-J9-POLOPS(DEPHD)ME-S  
 Cc: PJHQ-J9-LA2-S; ALS2-S; PJHQ-J1-PLANS-SO3A-S  
 Subject: FW: PW Issues



Richard

Gavin mentioned you are proposing to put together a PW paper. I have received some helpful comments from Col Garraway (he is our ALS expert on PW issues) which you may wish to incorporate the question of sending a war crimes investigations team. Although this whole question will give rise to friction with the US if they intend to go down the route of putting war criminals before their proposed coalition administration courts. There is also the issue of the death penalty.

I think the paper may also usefully ask MOD Legal Adviser in the paper for guidance on the applicability of ECHR in this situation - or whether we need to seek a derogation.

Charles

Many thanks for the comments - and please keep them coming, it is very helpful. I hope you don't mind us continuing to consult you on these issues.

Rachel

-----Original Message-----

From: ALS2-S  
 Sent: 04 February 2003 09:55  
 To: PJHQ-J9-LA-S  
 Subject: RE: PW Issues

Rachel,

Two further issues that you may want to consider before they become critical.

I had a call from Elizabeth Wilmshurst yesterday (FCO). US are beginning to look at war crimes and have made preliminary enquiries as to what our policy will be. This has a number of facets.

First, we were unprepared last time. The war crimes investigation team was despatched to theatre too late - after we had handed over all our prisoners - and it proved impossible to track people adequately before repatriation. We will need to consider whether we need a war crimes team on the ground in theatre at an early stage. That in itself raises problems over PW. There may be PW with information on war crimes (I had people volunteering information last time - but nobody to record it) and there may be PW who are suspects. Do we hold them ourselves or do we hand them over to the US? What of US prisoners who are handed to us? If the US want them back, the death penalty issue may come in.

Second, there is the issue of how we would try war crimes. You will find this issue on the last page of the "Lessons Learned" document. For your information, I have one of the last extant copies of SANDCASTLE in my office. The options on trial are limited. The Geneva Conventions Act only covers grave breaches of the four Conventions (and the Protocols though Iraq is not a Party). The ICC Act will be of limited use because of the restricted jurisdiction provisions. The Royal Warrant is still extant but wildly out of date. It would need a complete revision to ensure that it referred to up to date legislation - and also to make it ECHR compliant. I understand the US are, not surprisingly, looking at the military tribunal (Royal Warrant) option.

I know that you have raised "Guantanamo type" issues already in relation to transfer but we may need to look at our own domestic planning.

The second issue was mentioned to me this morning en passant. It involves the thorny question of the use of weapons against PW. The old JSP 391, at para.0219 dealt with the use of weapons in terms that complied with the Third Convention. This included draft rules for opening fire (Fig 2B-1). This gave authority where a PW was trying to escape and there was no other way to stop him. This was deliberately omitted from JWP 1-10 due to concerns about the effect of the ECHR. Was it sufficient justification that the prisoner was trying to escape if there was no immediate threat to life? Did the ECHR trump the Geneva Convention in this regard? The answer may depend of course on whether we have derogated. There is a school of thought that we can only claim the "lawful acts of war" provision