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LM/LEGAL/002

5 June 03

COS  
G3 Plans  
G2  
Pro  
BGs

INTERMENT OF SUSPECTS

Reference:

- A. 7 Bde Frago 70: Detention and Internment Procedures

INTRODUCTION

1. At Ref A the new Bde policy regarding those persons detained by CF was promulgated. The new policy was finally brought into effect at 030800D JUN 03 following the delay to the opening of the new detention facility at Ma'Quil.
2. The new policy makes a clear distinction between those persons who are detained for engaging in criminal activity (known as detainees) and those who we apprehend as we consider them to be a threat to force sy (nb: this does not necessarily mean a threat to the force mission). The latter category are known as internees. Detainees are to be handed over to the IZ authorities for investigation and prosecution for criminal offences. Internees are to be processed by CF and placed at the Theatre Internment Facility(TIF) at Umm Qasr. It is understood that this facility is soon to close and the UK will have to make a new arrangement for the internment of suspects.
3. The purpose of this LM is to address the concerns relating to the internment of suspects, and look at a number of recommendations to ensure that suspects are not released due to incorrect processing or evidential shortcomings.

THE LAW

4. Under international law, the Occupying Power has various rights and obligations under the Fourth Geneva Convention 1949 (GC IV). As we exercise effective control over Basra, there is no doubt that we are the Occupying Power. However, an Occupying Power also has a number of key powers at its disposal in dealing with the civ pop. A key power is that of internment of civilians, which may be ordered "only if the security of the Occupying Power makes it absolutely necessary"(art 42, GC IV).

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5. It is clear that this power to intern should be used only where there is no other means of dealing with the threat and also the internment must be subject to regular judicial reviews (art 78, GCIV). It is a serious measure and the Occupying Power must notify the ICRC whenever anyone is interned. Where it cannot be shown that it is absolutely necessary to intern then the internee must be released.

CONCERNS

6. Under the new procedure, at first instance it is the responsibility of the RMP to decide whether the suspect is released or interned. The test is whether there is evidence to suggest that the suspect is a threat to force sy. The new procedure dictates that the BGs must take the suspect within 1-2 hours to the RMP after their apprehension to enable the RMP NCOs to make such a decision in a timely manner (onward transport to the TIF must be within 6 hours of the arrest). There is a clear need for the BGs to hand over credible and tangible evidence to support the further internment of the suspect. It is a concern that there may be incidents (and I believe that there may have already been) where suspects known to G2 as active extremists or Ba'athists have been released at the BG HQ or at Umm Qasr due to the failure for supporting evidence to have been produced to place in front of the determining person, thereby causing the release of personnel who are a threat to force sy. This is a key concern which needs addressing as a matter of urgency.

RECOMMENDATION

7. It is recommended that:

a. A list is produced as soon as practicable of suspects whom the Bde consider to be a threat to force sy. Such a list should be distributed to BG IOs and the RMP as soon as possible so that if suspects are detained we are able to ensure that they are not either released or handed over to the Iz police for investigation into lesser criminal offences (eg suspected theft of motor vehs, etc). Obviously higher level Ba'ath Party members and known activists within extremist groups (eg Badr Corps) are certain to be identified by G2.

b. Along with the name of such a suspect it would be of benefit if G2 produce a file on each suspect containing any evidence of subversive activities, past association with the regime and their known affiliations. Such "off the shelf" information would be a very useful tool in convincing the RMP that the continued internment of the suspect is required and also would prevent frenzied last-ditch efforts by G2 to produce evidence prior to judicial review.

c. Evidence recovered by the BGs when the suspect is apprehended is handed over to the RMP at the time that he suspect is handed over. This

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could be in the form of exhibits (eg weapons, documents or money) or statements from the detaining personnel. This would ensure that those suspects not identified as potential internees by G2 prior to the arrest but whom we may wish to intern on the basis what is found or discovered, would meet the evidential requirements of the internment test.

d. Where deliberate, planned lift ops are to be carried out, the pre-existing evidence against the suspect is reviewed prior to this op to ensure that it is sufficient enough to ensure the internment of the planned target.

**CONCLUSION**

8. Whilst it is conceded that a number of the recommendations above may already be in practice or considered by the Bde staff, I think it important to address the issue prior to the internment of suspects becoming a practical reality. With the threatened Grey List of suspects to be published imminently and the adoption of the new procedures, it is vital that those who threaten the sy of CFs are identified and the evidence centralised so that it may be available at short notice.

  
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