

Message

From: Barnett Lt Col CMJ GBR (INET)
Sent: 24 July 2003 19:46
To: Wild Lt Col AJC GBR (INET)
Cc: Clifton Maj R GBR (INET)
Subject: FW: FRAGO 455 CATEGORIZATION OF DETAINEES
Alistair,

Would be grateful if you could pass this to Lt Col Nick Clapham (J9 Legal). Many thanks.

Nick,

FYI. This outlines the sort of issues that we are facing regarding the lack of understanding of the position at CJTF-7. We can manage it but I will be trying to explain the issues in detail on my visit tomorrow.

Russell,

Now that you are on the system this is forwarded for your info.

Charlie Barnett

Lt Col
Comd Legal
MND (SE)

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

From: Barnett Lt Col CMJ GBR (INET)
Sent: 20 July 2003 14:31
To: Hulme Maj SJ GBR (INET); Barrons Col RL GBR (INET); Burke-Davies Mr B GBR (INET)
Cc: Iverson Maj GBR (INET); Fielder Maj SM GBR (INET); Anstee Sgt RA GBR (INET); Le Fevre Lt Col GBR (INET); Ellis-Davies Capt S GBR (INET); Hamnett Capt GBR (INET)
Subject: RE: FRAGO 455 CATEGORIZATION OF DETAINEES

Colonel, Simon, Ben,

1. This draft FRAGO directing procedures for classification and processing of EPW, Detainees and Internees raises national concerns (both legal and political) for both the UK and also all the other MND(SE) TCN's. As a result elements of it are unlawful for our nations or politically unacceptable and we cannot therefore apply these orders in their entirety. I drafted a holding reply last night to be sent to CJTF-7 briefly outlining the UK and other TCN's international and national legal obligations. I will also raise this issue with the CJTF-7 Chief Staff JAG (Col Marc Warren) when he visits on Tues.
2. The arrangements for transfer etc between the UK and the US are governed by a MOU between the two, and in turn there is a MOU governing the arrangements for transfer between the other MND(SE) TCN's and the UK who are responsible for all EPW/Criminal Detainees/Internees held in the TIF at Um Qsar.
3. In short the draft FRAGO provides for 5 categories of detainees as follows:

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- CAT A - Highest level ie black list etc -immediate transfer to BIAP facility for interrogation etc directed
- CAT A1 - Mid Level - transfer to BIAP facility for interrogation w/in 24hrs
- CAT B - Lower mid - transfer to Um Qsar for interrogation NLT 72 hrs
- CAT C - Detainees - those without info of immediate tactical value and no further questioning is required
- CAT D - Detainees - those with no information

Categories B, C, and D do not really present any problems to us. Our category C and D will not make the TIF, having been debriefed already if appropriate, and handed to the IZ Police. Category B kept at the TIF in any event if they are a threat to the security of the force or handed to IZ Police if appropriate.

4. A couple of the specific concerns are as follows:

a. The direction to transfer, although, it can take place between the UK and the US must be governed by the US/UK MOU and in cases involving other TCN's detainees it must be governed by the TCN MOU taking into account their requirements and cannot be the subject of uninformed FRAGO's which do not reflect this. For example MND (SE) TCN's can request return of any detainees/internees whenever they wish, the UK is responsible for accounting for them at all times on behalf of the TCN's and NL will not contemplate internees. It is not impossible to assist US aspirations but we must get it right and this is the reason for the full review of the Detainee/Internee FRAGO that is ongoing (taking into account all national requirements and obligations).

b. There is a direction to handcuff, ankle shackle and hood CAT A & B immediately, during the interrogation process and during transportation. It is also directed that these measures be applied to all the other categories during transportation. Whilst it may be necessary to restrain by handcuffs etc the highest categories and hooding may be necessary and lawful in certain circumstances for good reasons (eg so they cannot id security force personnel, for their own safety etc) we must remember the Geneva Convention obligations that make it clear that individuals must be treated humanely, must be accorded respect and honour, and must be protected from intimidation and acts of curiosity etc. This is open to interpretation but for presentational reasons the UK stopped hooding towards the end of the conflict phase and so it is most certainly politically unacceptable for all but the most exceptional cases to be hooded now.

5. We should ensure that the following takes place:

- a. Check whether our current detention procedures up to the 48hr point ie transfer to the TIF accord generally with this draft FRAGO. **Could J2/PRO advise me on this please**
- b. Advise/Discuss legal obligations with CJTF-7 JAG's. **I will discuss Tues**
- c. Ensure that any subsequent FRAGO reflects these legal obligations and political considerations.

6. This note is intended to keep you all informed. I will advise if a specific problem develops.

Charlie Barnett

Lt Col
Comd Legal