

The Senate

Foreign Affairs, Defence and
Trade References Committee

Duties of Australian personnel
in Iraq

August 2005

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Terms of reference

On 8 March 2005, the following matters were referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 21 June 2005:

- (a) whether any Australian personnel (including employees, contractors and consultants) were present, or had duties which included being present, during any interrogations or interviews (however defined) of persons detained in relation to the war in Iraq, and in particular those persons suspected of having knowledge of Iraq's weapons of mass destruction;
- (b) whether any knowledge of, or concerns regarding, the treatment of those Iraqi detainees was provided to Australian Government departments, agencies and ministers, and what actions resulted from the provision of this information;
- (c) whether the Iraq Survey Group (ISG) were able to report frankly and fearlessly on what they had found, or whether attempts were made to censor or otherwise distort their findings; and
- (d) whether any Australian personnel provided information or concerns to any part of the Australian Government relating to concerns about the functions or reports of the ISG, and what actions resulted from the provision of this information.

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Committee's recommendation

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.

Chapter 1

Introduction

Background to the inquiry

1.1 Toward the end of April 2004, reports began to emerge worldwide about the mistreatment of Iraqi detainees by US personnel. During the first week of May, the publication of graphic photographs purporting to show the abuse of prisoners gave substance to the reports as did media accounts of mistreatment drawn largely from a leaked Pentagon report by Major General Antonio Taguba.¹ The photographs and the leaked report indicated that systematic and illegal abuse of Iraqi detainees had occurred between October and December 2003 including numerous instances of 'sadistic, blatant, and wanton criminal abuses'.²

1.2 On 7 May 2004, Amnesty International issued a statement that it had 'presented consistent allegations of brutality and cruelty by US agents against detainees at the highest levels of the US Government, including the White House, the Department of Defense, and the State Department for the past two years'.³ At about the same time, it became widely known that the International Committee of the Red Cross (ICRC) had been investigating the detainment of Iraqi prisoners and had complained in a report to US authorities about their ill-treatment. Such reports generated much speculation about US authorities and their awareness of, and response to, the allegations.

1.3 In Australia similar questions were being raised about whether government officials had known of the allegations and, if so, what actions had been taken.⁴ On 11 May 2004, the Minister for Defence told the Senate that the Department of Defence had become aware of:

- allegations of abuse about 20 or 21 January 2004 through a CNN Report that made reference to an investigation being carried out by the Pentagon;
- the ICRC report on detainment practices in Iraq in February 2004; and
- the photographs of prisoners when they were made public in late April/early May 2004.⁵

1 See for example, *Sydney Morning Herald*, 1 May 2004, p. 17, 3 May 2004, p. 8; *The Australian*, 3 May 2004, p. 11, the *New Yorker*, 4 May 2004, p. 1A and 10 May 2004.

2 See for example, Amnesty International Australia, Media release, 7–8 May 2004; *CQ Weekly*, 8 May 2004, pp. 1060–1066; the *New Yorker*, 4 May and 9 May 2004.

3 Amnesty International Australia, Media Release, 7–8 May 2004.

4 *Courier Mail*, 11 May 2004, p. 1; Transcript, *AM*, 11 May 2004.

5 Questions without notice, Senate *Hansard*, 11 May 2004, p. 22767.

1.4 On 27 May 2004, however, the Australian media carried reports that an Australian military officer stationed in Baghdad, Major George O'Kane, had been aware of allegations of prisoner abuse as early as October 2003 and that he had passed on details to Australian officials in regular reports.⁶ These revelations sparked another round of questions seeking clarification about who knew about the allegations of mistreatment of Iraqi prisoners, when they knew and whether they reported them.

1.5 The Senate Foreign Affairs, Defence and Trade Legislation Committee devoted much of its examination during the budget estimates hearings in May 2004 to the matter of the duties of Australian personnel in Iraq particularly with regard to the treatment of Iraqi detainees.

1.6 Since then, the matter of the treatment of Iraqi prisoners has not been far from public notice and one likely to ignite lively public debate. Indeed, on 14 February 2005, the matter once again became headline news when Mr Rod Barton, an Australian senior specialist advisor to the head of the Iraqi Survey Group, stated on national television that he had interrogated Iraqi detainees. This assertion appeared to contradict a statement by the Minister for Defence that Australians did not interrogate prisoners.⁷ He also expressed concern about the objectivity of the work he was engaged to do in Iraq with the Iraq Survey Group (ISG) that was to report on WMDs in Iraq.

1.7 The Senate Foreign Affairs, Defence and Trade Legislation Committee examined the matters raised by Mr Barton during its public hearings on additional estimates on 16 and 17 February 2005. Detailed questions were put to Defence and the Minister about the work of the ISG and the duties of Australians working with this group, the various meetings that officials had with Mr Barton on his return to Australia and the survey conducted by Defence of personnel who had information about the treatment of Iraqi detainees.

Establishment of the inquiry

1.8 To pursue the matter further, the Senate, on 8 March 2005, referred the following matters to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 21 June 2005:

- (a) whether any Australian personnel (including employees, contractors and consultants) were present, or had duties which included being present, during any interrogations or interviews (however defined) of persons detained in relation to the war in Iraq, and in particular those persons suspected of having knowledge of Iraq's weapons of mass destruction;

6 See for example, *Sydney Morning Herald*, 27 May 2004, pp. 1 and 7; Transcript, 7:30 report, 27 May 2004 and Transcript, *Lateline*, 27 May 2004; Transcript, *PM*, 27 May 2004.

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

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- (b) whether any knowledge of, or concerns regarding, the treatment of those Iraqi detainees was provided to Australian Government departments, agencies and ministers, and what actions resulted from the provision of this information;
 - (c) whether the Iraq Survey Group (ISG) were able to report frankly and fearlessly on what they had found, or whether attempts were made to censor or otherwise distort their findings; and
 - (d) whether any Australian personnel provided information or concerns to any part of the Australian Government relating to concerns about the functions or reports of the ISG, and what actions resulted from the provision of this information.

On 21 June 2005, the Senate granted an extension to the inquiry's reporting date to 9 August and then on that day granted a further extension to 18 August 2005.

Conduct of the inquiry

1.9 The committee advertised the inquiry in the *Canberra Times* on 12 March, in *The Australian* on 16 and 30 March 2005 and on its website. It took evidence from Mr Rod Barton at a public hearing on 29 March in Parliament House, Canberra. The transcript of evidence is available on the web site.

Structure of the report

1.10 The report comprises four chapters—an introduction and three chapters that directly address the terms of reference.

Acknowledgment

1.11 The committee is grateful to, and wishes to thank, all those who assisted with its inquiry.

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)'.¹ 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.²

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.³

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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 (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.⁴

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.⁵

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'.

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
(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.⁶

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.⁷ 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.⁸

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

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 1.⁹

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'.¹⁰ 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'.¹¹

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.¹²

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

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.

expertise to the individual running the debrief.¹³ 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.¹⁴ 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.¹⁵

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.¹⁶

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;

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.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰ 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'.²¹ 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.

...

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.

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.²²

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.²³ 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.²⁴ 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.²⁵

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'.²⁶

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

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'.²⁷

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.²⁸

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.²⁹

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'.³⁰

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'.³¹ 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

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'.³²

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.³³

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.

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

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

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_rodarton/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.

Chapter 4

The Iraq Survey Group and its ability to report frankly and fearlessly

4.1 This chapter addresses the second half of the terms of reference which is concerned with the work of the ISG. The committee examines whether the ISG was able to report frankly and fearlessly on what it had found, or whether attempts were made to censor or otherwise distort its findings. It also seeks to ascertain whether any Australian personnel provided information or concerns to the Australian government relating to concerns about the work of the ISG and, if so, what actions followed.

The ISG reports

4.2 Dr David Kay was the first Special Advisor to the ISG, serving in Iraq from June 2003 until 7 December 2003. Under his direction, ISG began a systematic survey and examination of the existence and location of WMD capabilities. He provided an interim progress report to the Director of Central Intelligence in September 2003 on the early findings of the investigation. Under his leadership, ISG interviewed many key participants in the WMD programs, undertook site visits, and began the review of captured documents.¹

4.3 Mr Charles Duelfer replaced Dr Kay and took up his position as Special Advisor in Iraq on 12 February 2004. The ISG produced an interim report in March 2004. On 30 March 2004, Mr Duelfer told Congress that after Dr Kay left, the ISG 'continued to follow its previous strategy, but the effort shifted towards fewer site visits, more debriefings, and greater use of document sorting and review'. He concluded that 'there is more work to be done to gather critical information about the regime, its intentions, and its capabilities, and to assess that information for its meaning.'² The ISG produced a 'comprehensive' report in September 2004.

4.4 The intelligence services of three nations—the UK, the US and Australia—supported the ISG. They include the SIS and the Defense Intelligence Service in the United Kingdom; both the Defense Intelligence Agency and Central Intelligence Agency in the United States, and some highly skilled intelligence analysts provided by Australia. The September 2004 report of the ISG states that while these institutions expressed interest in the findings of the ISG and certainly were curious where their

1 *Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD*, 30 September 2004.

2 Testimony to the US Congress by Mr Charles Duelfer, Director of Central Intelligence Special Advisor for Strategy regarding Iraqi Weapons of Matters Destruction (WMD) Programs, 30 March 2004.

pre-war assessments went wrong, they did not try to steer in any way the judgments included in the report.³

4.5 Mr Barton supported the view that the September report of the ISG was an objective report free from the influence of external forces. He stated that the substantive report of the ISG presented to congress last October was 'a frank and honest report'. To his knowledge there was no attempt by any government to censor or in any other way interfere with the conclusions of the report.

4.6 He believed, however, that this was not the case with the March interim report that he was involved with. He was in no doubt that political influences from London and Washington were exerted to try to change what the ISG was saying in this report.⁴ He noted, however, that the Australian government did not seek to influence the ISG in drafting its report.

4.7 Mr Barton explained that the external pressure being applied on the team was to prepare a report that did not honestly reflect the evidence they had gathered—that matters were not to be included in the report because they were 'too politically difficult'.⁵ He told the Committee:

I was responsible for the coordination and oversight of the March report. It was circulated to capitals for comment, and I received feedback from Washington, London and Canberra. The comments from Canberra were constructive and largely editorial and caused me no difficulty. London, however, suggested that we add certain material. I believe these additions were designed to leave the impression that WMD might yet be found. This would have been contrary to our views. The CIA also sent suggested amendments. Many of these were quite useful, but there were two amendments that were blatant attempts to change our findings.

To the credit of Charles Duelfer, the head of the ISG, these attempts at changing the nature of the report were rejected. Nevertheless, it was still a poor report in that it did not say what by this time we knew... In my view the report was symptomatic of a wider malaise in the ISG. At that time there was no real objectivity in the investigation and it seemed to me that a lot of the direction, particularly in the chemical and biological areas, was coming from Washington.⁶

4.8 Mr Barton explained that his resignation letter outlined some of this information. He stated that 'Again, I should make it clear that I was not the only

3 Acknowledgements, *Comprehensive Report of the Special Adviser to the DCI on Iraq's WMD*, 30 September 2004.

4 *Committee Hansard*, 29 March 2005, pp. 47–48.

5 Transcript, *Four Corners*, 14 February 2005.

6 *Committee Hansard*, 29 March 2005, pp. 3–4.

person to resign. Another senior Australian resigned shortly before me, for similar reasons, as did one senior investigator from the UK'.⁷

4.9 He detailed some of the aspects of the interim report that worried him:

The mobile laboratories were something that we, the ISG, investigated very thoroughly throughout 2003. By the end of that year and certainly by early 2004, we had come to fairly firm conclusions on exactly what those trailers were. We call them trailers. There were two of them that we had in our camp, actually—at Camp Slayer. The evidence of all of the experts who went through those trailers was that those trailers were nothing to do with biology. In actual fact, they were hydrogen generators. That was an issue that I was told by a senior CIA official we could not discuss. In fact, that senior person—and I am not talking about Charles Duelfer; I am talking about his senior staff member—said that it did not matter what they were or what they were for, he did not want to know and we could not write about that. It was too politically difficult, he told me. I said: 'How can we refer to these in the report? We need to make a reference. We have done all of this work and we have quite a thorough document on these trailers—as to what they are and what their purpose is'. He said, 'I don't care—that can't go in the report'. I spoke to Charles Duelfer afterwards and he said, 'I'm not interested in that'. Therefore, in the report we put out in March, there was no reference to our findings about those trailers. I actually put it to Charles: 'There are still members in your government—not in mine anymore, but in yours—who are referring to those trailers as biological trailers. We know they are not and we are not telling them.' He said, 'I'm not interested in that. We're not putting that in the report'. And it did not go in.⁸

4.10 He explained further:

That was one of the concerns. It was the whole process, not just the report...There were other issues that we already knew about—things that debunked some of the other stuff that we knew about—that had been raised in Powell's presentation to the United Nations Security Council the February before...

When I asked Charles Duelfer about this, his argument—and I take on a little bit of this—was 'I have been here too short a period of time. You are trying to make me come to firm conclusions about things when I have only been here a short while.' We argued a lot about that. But I said to him, 'Look, by the time you report to congress, you will have been around for six or seven weeks, first of all. Secondly, you didn't come here cold. You were the deputy executive chairman from UNSCOM. You have been a researcher, an academic, looking at all these issues. You were briefed in Washington before you came and we have briefed you now. So you are not starting off cold. I know it will be difficult'. I felt that we should still say

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

8 *Committee Hansard*, 29 March 2005, pp. 47–48.

these things. To hide information that we knew about, I thought, was very wrong.

4.11 Mr Barton told the committee that he had reported his concerns about the ISG to government authorities on his return to Australia in March 2004. As noted previously, Mr Pezzullo had consulted an Air Force Group Captain who had been present at the meeting who recalled:

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.⁹

4.12 His letter of resignation in particular cited the influence being exerted by the CIA on the content and shape of the report. Mr Barton wrote that 'The Agency's attitude was *there are weapons out there, we just have to find them*'. He went on to state in his letter of resignation:

The consequences of the new CIA approach had a dramatic effect on the ISG and influence its daily work. There are many examples of this. At a meeting I attended on 20 February, analysts were told that an edict from Washington stated that '*the burden of proof had to be higher*' for assessments that contradict statements by Secretary Powell in his speech to the UN a year earlier. This caused re-investigation of issues that under other circumstances would have been finalized. But the most profound effect was on the March report.

The Progress Report that I had been coordinating was put aside and a new 25 page, 'Status Report' that contained no assessment, was put forward by Charles Duelfer. He said this approach was endorsed by the Agency although he claimed that he was not pressured to take this line. The Status Report avoids assessment of, and in some cases even mention of, controversial and negative issues, including the so-called 'biological trailers', the aluminium tubes, the mobile biological production program, chemical weapon storage depots and the small pox program. The effect is therefore a biased report and the suppression of information in the ISG's possession.¹⁰

4.13 He also mentioned the resignation of two close colleagues—both senior advisers to the head of the ISG—on similar grounds. One from the UK who according to Mr Barton was the most experienced and senior investigator and the other an Australian who was doing a job similar to his. He had discussed this matter with them

9 Committee Hansard, 16 February 2005, p. 77.

10 Rod Barton, letter of resignation, 29 March 2004, http://www.abc.net.au/4corners/content/2005/20050214_rod_barton/img/resignation1.gif (27 March 2005).

and also saw their letters of resignation.¹¹ He told the Committee that their letters of resignation were couched in similar terms to his:

I have seen both of their resignation letters, and of course I discussed this with them. I know exactly why they resigned, and it was essentially for the same reasons that I resigned. That is, they felt there was no objectivity at that time in the ISG, not only in the way it was reporting but in the way it was doing its investigation. As I mentioned, the direction seemed to be coming from Washington and from the CIA.¹²

4.14 He also understood that the Australian colleague who resigned shortly before him, and who had written a similar letter of resignation, had discussed this with various senior officials in both DFAT and Defence in March last year. Moreover, the colleague, who had left Iraq on 8 March 2004, had sent him a series of emails detailing his experiences on arrival in Australia. They record that he met Paul O'Sullivan and spent about 20 minutes with Minister Downer. Mr Barton stated that he was informed that Mr Downer had seen the letter of resignation and referred to it and some of the assessments it contained.¹³ According to Mr Barton, on 10 March, his colleague also saw the Secretary of Defence, Mr Ric Smith and also Ms Foster, the branch head responsible for the area.

4.15 Mr Barton also mentioned a meeting in Baghdad with the Australian Representative, Neil Mules, and Mr Quinn, where according to Mr Barton they discussed his colleague's resignation and the letter of resignation.¹⁴ The identity of Mr Barton's Australian colleague, Dr John Gee, was revealed publicly in media reports on 30 and 31 March 2005.¹⁵

4.16 It appears that there may have been two meetings, one on 26 February and a dinner party on 2 March 2004.¹⁶ According to Mr Blazey, Head Iraq Task Force, at the meeting on 26 February, Mr Barton and Dr Gee conveyed to Mr Quinn their concerns about the direction of the ISG relating to the forthcoming ISG's interim report. He understood the main concerns centred on 'some methodological issues, the structure and objectivity of the report'.¹⁷ He also confirmed that resignations were discussed and that Dr Gee presented Mr Quinn with his letter of resignation which

11 *Committee Hansard*, 29 March 2005, pp. 11, 39–40, 44.

12 *Committee Hansard*, 29 March 2005, p. 11.

13 *Committee Hansard*, 29 March 2005, p. 42.

14 *Committee Hansard*, 29 March 2005, pp. 43–44.

15 *The Australian*, 30 March 2005, p. 4 and 31 March p. 4; *Sydney Morning Herald*, 31 March 2005, p. 5 and the *Age*, 31 March 2005, p. 6.

16 See para. 3.24 in chapter 3.

17 *Proof Committee Hansard*, 1 June 2005, p. 68.

was addressed to Mr Quinn.¹⁸ He believed that the Minister for Foreign Affairs was provided with a copy of the letter.¹⁹

4.17 When asked whether a report emanating from this meeting was sent back to Australia, Mr Blazey stated his understanding that there was a report but the 'more substantive record of those concerns was contained in a letter conveyed to Mr Quinn by Dr Gee'.²⁰

4.18 In turning to Dr Gee's meeting with Mr Downer, Mr Blazey told the committee that it was not appropriate for him to 'report on the content or otherwise of private conversations of the foreign minister.' He was of the view that Mr Quinn was also present at that meeting.²¹

4.19 The committee wrote to Dr Gee inviting him to make a written submission and to appear before the Committee to give evidence. He declined the invitation stating that he had not participated in any interrogations, interviews or debriefs of Iraqi personnel while in Iraq. He stated further that he did not visit Camp Cropper, had not been aware of, or made any reports of, instances of abuse of Iraqi detainees in Camp Cropper on his return to Australia. He confirmed that he had resigned from the Iraqi Survey Group in February 2004 and that he explained the reasons for this to the government at the time. He was of the view that he could not usefully add any further information to what was already on the public record about these matters.

4.20 Furthermore, he felt that as a former public servant he was obliged under the Code of Conduct to maintain appropriate confidentiality about his dealings as an employee with any Minister or Minister's member of staff. He quoted from the code that directs that '...except in the course of his or her duties as a APS employee or with the Agency's express authority, not give or disclose directly or indirectly, any information about public business or anything of which the employee has official knowledge'. Dr Gee concluded that:

...I note that Mr Downer has already publicly described our conversation of 15 March as private and declined to give any details of it: since he has characterised it thus, I do not feel there is anything I can say about it.²²

4.21 He also noted that the Post Separation Employment Guidelines attached to the Department of Defence's letter of release from his contract indicated that he was bound by sub-Section 70(2) of the Crimes Act.

18 Proof *Committee Hansard*, 1 June 2005, pp. 69 and 70.

19 Proof *Committee Hansard*, 1 June 2005, p. 71.

20 Proof *Committee Hansard*, 1 June 2005, p. 68

21 Proof *Committee Hansard*, 1 June 2005, p. 70.

22 Correspondence from Dr Gee to the committee, 4 May 2005.

4.22 Recognising that a Senate standing committee possesses the full range of inquiry powers, including the authority to compel evidence and that any person giving evidence before such a committee is protected under parliamentary privilege, the committee requested his attendance. It explained to him that given his concerns about giving evidence, the committee noted that Mr Peter Varghese, Director-General, Office of National Assessment, gave assurances that there would be no repercussions for him or ONA if he were to appear before the committee.²³

4.23 The committee advised Dr Gee that Mr Varghese's statement was in accordance with section 12 of the *Parliamentary Privileges Act 1987* dealing with the protection of witnesses. It noted that it is a breach of this section for any person to take adverse action against another person because that person gives evidence before a parliamentary committee.

4.24 The committee understands Dr Gee's reluctance to give evidence in public about his letter of resignation and conversations with the Minister and senior officials. The committee, however, explained to Dr Gee that, although it prefers all evidence to be given in public, he could make a request to the Chair to give evidence in camera and the committee would consider his request.

4.25 Dr Gee declined the committee's request for his attendance to give evidence re-stating his view that there was little value he could add to the committee's deliberations. He stated that much of what he could say had already been placed on the public record or because there could be limits on what he 'could say because of residual obligations to the Commonwealth arising from his engagement by the Department of Defence'.

4.26 The committee wants to make clear that in respect of giving evidence to it, Dr Gee was not legally bound by, or liable to, the provisions to which he referred. Furthermore, the committee does not accept his assumption that there was little of value he could add to the committee's deliberations. This committee has the important and difficult task of testing the veracity of evidence before it in order to arrive at informed and well-considered findings. The committee is best placed to determine the matters which it believes needs to be examined and it relies on the good will and cooperation of witnesses to assist it in its inquiry. The committee believes that Dr Gee's failure to appear before the committee seriously frustrated attempts by the committee to reconcile the information it had before it and severely hindered the committee's obligation to report on its terms of reference.

4.27 One committee member noted, however, that it was Dr Gee's prerogative to decline the committee's request for him to appear and that the committee had the power to subpoena Dr Gee, but it chose not to do so.

23 Mr Varghese gave these assurances before the Finance and Public Administration Legislation Committee on 24 May 2005.

Committee view

4.28 In addressing the terms of reference, the committee is unable to find sufficiently strong evidence to suggest that the ISG was unable to report frankly and fearlessly on what they had found. Mr Barton's evidence indicates that there were attempts to influence the ISG but there is no corroborating evidence.

4.29 From the evidence, it is clear that Mr Barton and Dr Gee discussed their concerns about the work of the ISG with the Australian Representative and Mr Quinn in Baghdad. Evidence also shows that Mr Barton raised concerns about the function of the ISG and its March report with government officials on his return to Australia in March 2004.

4.30 According to the evidence, it is likely that Dr Gee may also have alerted officials to similar concerns on his return a few weeks earlier. Dr Gee would not appear before the committee to confirm, deny or comment on Mr Barton's claims and would not provide the committee with a copy of his letter of resignation which allegedly referred to his dissatisfaction with the influence being exerted on the ISG. Government officials similarly refused to comment on Dr Gee's letter of resignation or on the meetings held between Dr Gee and the Minister for Foreign Affairs and between Mr Gee and the Secretary of Defence and other officials regarding his letter of resignation.

4.31 It is unclear how the Department of Defence or the Department of Foreign Affairs responded to information provided to them suggesting that influence was exerted on the ISG when preparing its March report. The silence from both departments indicates that there was no follow-up.

SENATOR JOHN HOGG
Chairman for the Inquiry

Appendix 1

Tabled documents

Tabled at the public hearing held on 29 March 2005:

- Mr Barton's letter of resignation
- Opening Statement
- 'Declassified' memo from the US Defence Intelligence agency