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THE GENEVA CONVENTIONS OF 1949 AND THE TREATMENT
OF PRISONERS

The attached paper by the Defence Secretariat
will be tabled for consideration by the Chiefs of Staff
at their meeting at 1030 on Wednesday 28 April 1982.

Attachment:

AUS(D Staff) Paper - The Geneva Conventions of 1949
and The Treatment of Prisoners.

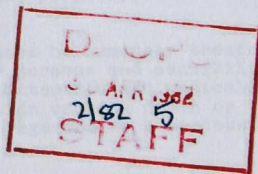
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COS(Misc)167742/1

THE GENEVA CONVENTIONS OF 1949 AND THE
TREATMENT OF PRISONERS

A note by the Defence Secretariat

Application of the Geneva Conventions

1. The 4 Geneva Conventions of 1949, covering the conduct of war, to which both Argentina and the UK are parties, apply not only when a state of war exists, but also when any other armed conflict arises between parties to the Conventions. They do not depend for their application on the existence of a formal state of war. They have therefore been applicable since 2 April 1982 when Argentina occupied the Falkland Islands and they will remain applicable until all hostilities, and the occupation, have ceased and all prisoners have been repatriated.
2. Under the terms of the 3rd Geneva Convention, prisoners taken by either side, who are members of the armed forces or civilians accompanying them (except medical and religious) are "prisoners of war" and should be accorded all the benefits of the Conventions.

Main Provisions

3. The Geneva Conventions provide a comprehensive guide to the treatment of prisoners. Their main provisions of relevance to Operation CORPORATE are as follows:
 - a. Entitlement: If there is doubt about the status of captured persons, they should be treated as PoWs until their status has been determined by a specially appointed Board of Enquiry;
 - b. Notification: On capture, particulars of PoWs should be taken down and transmitted through a neutral state (the "protecting power"), designated for that purpose, to their country of origin;
 - c. Protection: PoWs must at all times be humanely treated. They are entitled to respect for their persons and sensibilities and they must be provided with free maintenance and medical attention. Any unlawful act or omission causing death or seriously endangering health would be regarded as a serious breach of the convention.
 - d. Evacuation: PoWs must be evacuated as soon as possible from a danger zone. The evacuation must be carried out humanely and sufficient food, water, clothing and medical attention provided. If PoWs, during evacuation, pass through transit camps (such as on Ascension Island) their stay should be as brief as possible.

e. Internment: Usually POWs are interned in properly designated and equipped POW camps (although in the case of the Marines captured by the Argentines and the Argentinian prisoners taken in South Georgia they have been or are being repatriated). If, subsequently, it is decided to intern Argentinian POWs for the duration of hostilities, they must be accommodated on land (the Conventions prohibit internment on board a ship as distinct from carriage on board a ship to some place on land). The standard of accommodation should equate to that of our own forces billeted in the same area.

f. Work: Officers are not to be required to work and NCOs may be required only to do supervisory work. Other ranks may be required to undertake certain tasks specified in the convention. They may not be of a military nature.

g. "Protecting Power": The protecting power has the right to inspect POW camps and to deal with prisoners' appeals against any violation of the Convention. If no protecting power is appointed the ICRC can exercise its functions with the approval of all concerned. The practice is for one side to propose a protecting power, but this is subject to the acceptance of its adversary. (This step has not yet been taken).

4. In short, the provisions of the Conventions concerning the treatment of prisoners are designed to ensure that POWs receive no less favourable treatment than would our own forces. These provisions are summarised in detail in an Army booklet "The Law of Armed Conflict" which has been sent to each ship in the Task Force together with a copy of the 4 Geneva Conventions.

Implications for Repatriated UK Prisoners

5. Article 117 of the 3rd Geneva Convention states that:

"No repatriated person may be employed on active military service".

Taken in isolation, this restriction would appear to disallow the redeployment of the UK Marines captured on the Falkland Islands and South Georgia, many of whom have now joined the Amphibious Force. Director of Army Legal Services' view is that this Article must be interpreted in conjunction with Articles 109 to 116 (Part IV Section I) which apply only to sick, wounded and long term POWs - an interpretation which is fully supported by the principal international commentaries. The FCO legal advisers, while not dissenting from the legal analysis which would be used to justify this conclusion, have pointed out, however, that the legal arguments are complicated and that there are real difficulties in countering any Argentinian claim that we were in breach of Article 117.

6. Although this is inevitably a risk, in our view the balance of operational advantage - particularly intelligence and morale aspects - appears to outweigh the potential difficulties in presenting our case if challenged. And although, therefore, it would be unwise to give further publicity to the return to service of the repatriated Marines, MOD legal advice is that their return would not amount to a breach of the Convention.

Conclusions:

7. The Chiefs of Staff are invited to:

a. . Note that the provisions of the 1949 Geneva Conventions apply to Operation CORPORATE, and that instructions have been sent to the Task Force to this effect;

b. Recommend CINCFLEET to instruct that the booklet "The Law of Armed Conflict" be brought to the attention of all units involved in the operation, and in particular the provision that PoWs should not be required to do military work;

c. Agree that the repatriated Marines be allowed to participate in the Amphibious Force.