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HEADQUARTERS JOINT FORCES NEW ZEALAND  
Office of the Commander Joint Forces New Zealand  
**MINUTE**

Copy of 2

JFNZ 01455/ROE

Nov 09

A/CDF

Through: DSO  
DGDLS

**ROE REQUEST (ROEREQ): OP WĀTEA**

**References:**

- A. NZDF 03130/DSC/2 dated 24 Aug 09
- B. OP WAATEA 03130/LEGAL dated 26 Sep 09
- C. OP WAATEA 03130/LEGAL dated 30 Sep 09
- D. **PSR(S)1**
- E. 1977 Additional Protocol I to the Geneva Conventions ( AP I )

1. HQ JFNZ requests an amendment to the ROE authorised for use by TF 81 (NZDF Rules of Engagement for Operation WĀTEA)( Annex C to Ref A), to better enable TF 81 to carry out its prescribed mission " to maintain stability, defeat the insurgency, assist the Crisis Response Unit (CRU), and enhance the reputation of the NZDF and GONZ ". One of the tasks prescribed for TF 81 is to be prepared to conduct direct action tasks against insurgent networks in support of ISAF and GIRoA ( Ref A para 14.b. ).

2. The current ROE rule governing direct action is at Annex C to Ref A, which provides:

" Attack on **PSR(S)3** is permitted, as they have been declared hostile. " ( Ref A, Annex C para 3, rule **H** ).

The requested alternative ROE rule is:

**H**

Attack on individuals, forces or groups directly participating in hostilities in Afghanistan, including **PSR(S)3** against the legitimate Afghan government, is permitted.

AMPL/1/ Planned attacks subject to approval at the authorisation level for **PSR(S)3**

3. This ROEREQ is raised in response to Refs B and C. At Ref B the Legal Officer OP WĀTEA outlined the differences between the existing ROE rule and the equivalent provisions of the ISAF ROE. ROE rule **H** is in more restrictive terms than the **PSR(S)1** :

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PSR(S)1

PSR(S)1

4. Those ISAF rules, PSR(S)3 give to the planners of operations flexibility to plan attacks on individuals and groups which by use of force resist ISAF lawfully extending the authority of the Government of Afghanistan. TF 81's current ROE, by contrast, appears limited to attack on PSR(S)3

Insurgency in Afghanistan is not limited to persons who are identifiably members of That poses the potential difficulty of intelligence clearly indicating an intended insurgent attack which ISAF intends to pre-empt by direct action, tasking TF 81 to do so, but the intelligence does not indicate that the perpetrators are members of PSR(S)3 the forces specified in ROE

H In such a situation ROE H on its present phrasing does not authorise attack on the intended insurgent attackers.

5. The TF 81 ROE are robust and allow for the use of force, including deadly force, in the conduct of operations, in particular for mission accomplishment, for self defence of TF 81, and in defence of designated personnel and property. No change to that situation is sought. The issue this ROEREQ addresses is the authority to plan and conduct direct action missions, in PSR(S)3 the need to have identified the targets of intended direct action as belonging to PSR(S)3 presently specified.

6. At Refs B and C, ROE H in its present form has been viewed as partly inconsistent with the mission of TF 81 you prescribed at Ref A; namely "to maintain stability, defeat the insurgency, assist the Crisis Response Unit (CRU) and enhance the reputation of the NZDF and GONZ". That inconsistency derives from TF 81 being precluded from planning direct action missions against insurgent elements in cases where the intended target cannot be identified as belonging to the specified forces. It is considered that the inconsistency could, as advised at Ref C, impede the ability of TF 81 to undertake at least part of the "defeat the insurgency" part of its mission. The inconsistency is also difficult to reconcile with the broad scope of the "be prepared to conduct direct action tasks against insurgent networks in support of ISAF and GIRoA" provision of Ref A para 14.b.

7. PSR(R)1, PSR(IC)4 the descriptive phrase "as they have been declared hostile" which appears in the existing rule H and which is drawn from the ROE menu PSR(S)1 Given the uncertainty as to what that phrase adds in respect of the specified forces, the operative part of the present rule being that attack on them is permitted, the proposed rule omits that phrase as superfluous.

8. The reference to "individuals, forces or groups directly participating in hostilities" employs a phrase known in the LOAC (AP I, Art 51§3), and which has been the



subject of discussion with and amplification to the Legal Officer OP WATEA as outlined in Ref B. It covers the range of entities which could be considered to be part of the insurgency TF 81 is tasked to defeat.

9. The proposed inclusion of the approval level for direct action tasks, **PSR(S)1** is intended to enhance interoperability by having the same ISAF staffing process and authorisation levels applying to TF 81 operations as apply to other ISAF SF elements. It does not alter the status of command of TF 81 as set out in Ref A para 41.

10. Importantly, this ROEREQ does not affect the constraints imposed in Ref A, para 15. Your prior approval of the constrained types of operations is still necessary. Moreover, it is not considered that this ROEREQ in any way implies or suggests a change in the primary focus of TF 81. It is my intention that it will enable TF 81 to pursue its mission more effectively.

11. It is recommended that you **approve** the amendment of Ref A to:

a. Delete the existing rule **H** at para 3 of Annex C to Ref A, which provides that "Attack on **PSR(S)3** is permitted, as they have been declared hostile."; and

b. Substitute ROE **H** as p above, namely:

**H** Attack on individuals, force ps directly participating in hostilities in Afghanistan, including **PSR(S)3** against the legitimate Afghan government, is permitted.

AMPL/1/ Planned attacks subject to approval at the authorisation level for **PSR(S)3**

P.J. STOCKWELL  
AVM  
COMJFNZ

DTelN: **PSR(IC)3**

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