



Legal Brief: Law of Armed Conflict Rules of Engagement

Operation Wātea

SECRET

Scope



1.

Law of Armed Conflict

- LOAC Principles
- Code of Conduct
- Respect for Islam
- Command Responsibility, Incident Reporting and Superior Orders

2.

Rules of Engagement

3.

Direct Action

4.

Detainee Handling

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LAW OF ARMED CONFLICT

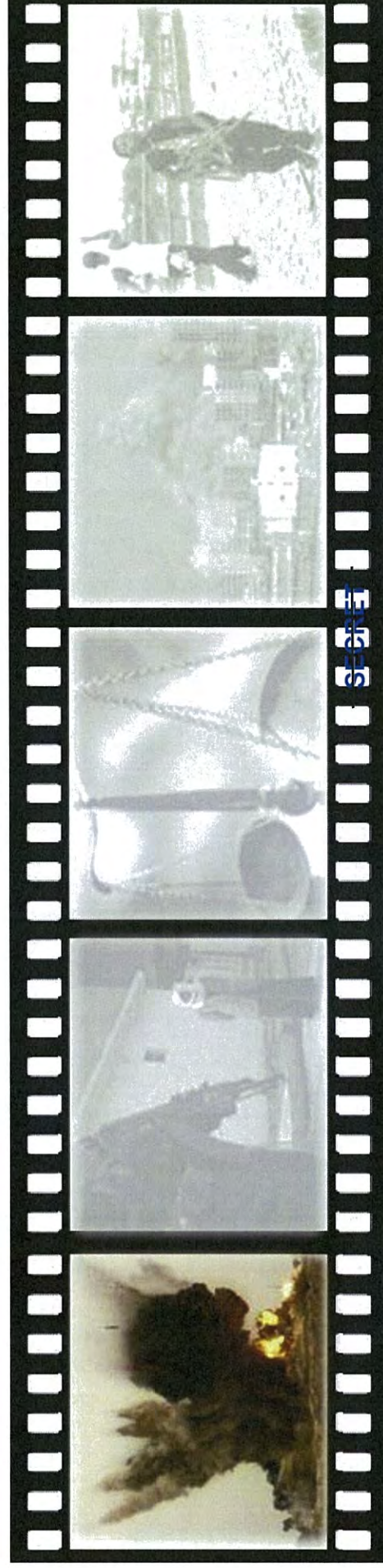
PART ONE

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LOAC Principles

Principle 1: Military Necessity

- You are permitted to use the force required to achieve the military objective



LOAC Principles

Principle 2: Humanity

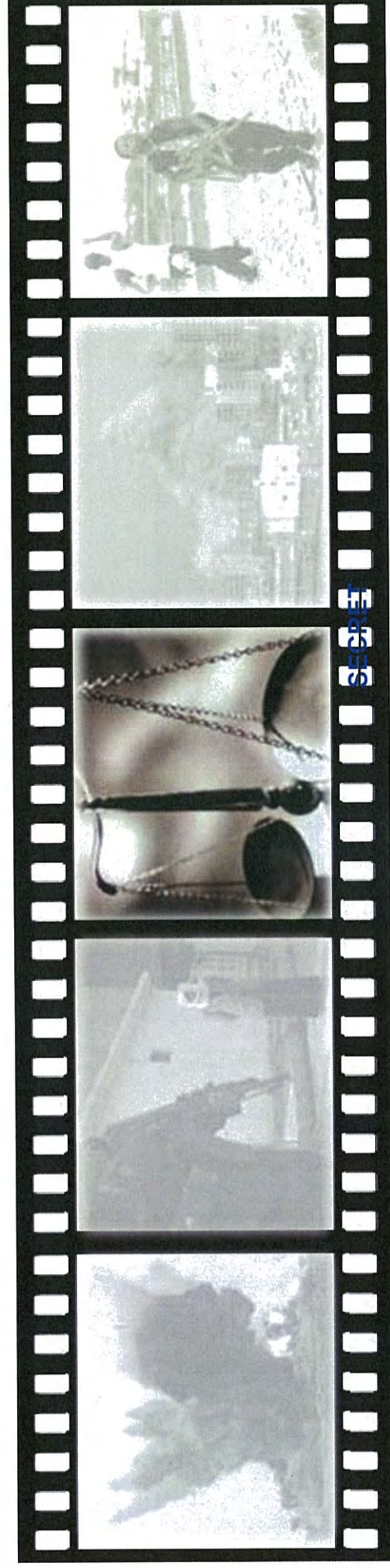
- Not even armed conflict releases you from basic obligations to other humans
- You must not cause suffering or destruction beyond that necessary to accomplish the mission
- You must not harm people or objects that are not legitimate targets



LOAC Principles

Principle 3: Proportionality

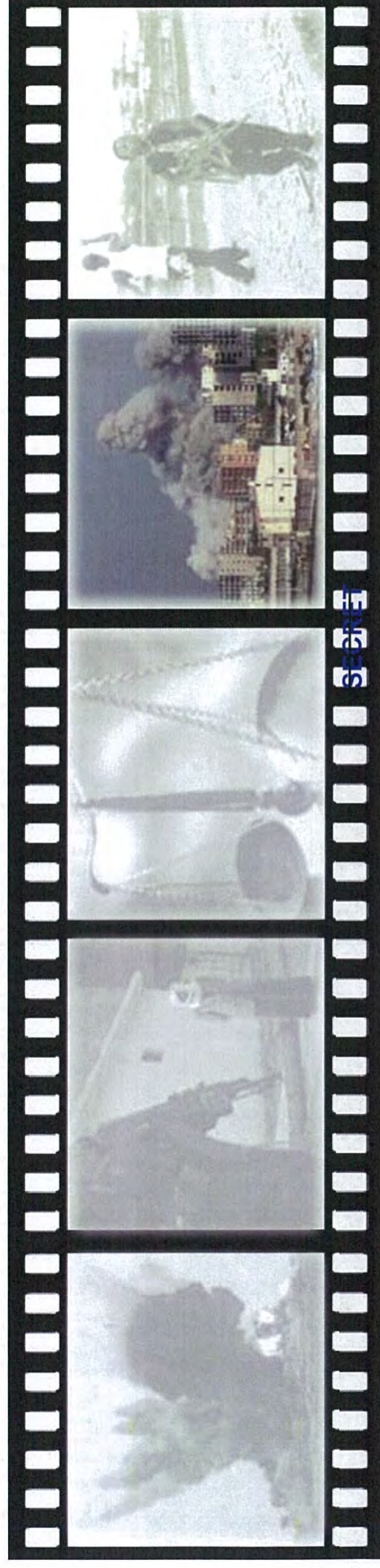
- Some rules of LOAC require military necessity to be balanced against humanity



LOAC Principles

Principle 4: Distinction/Identification

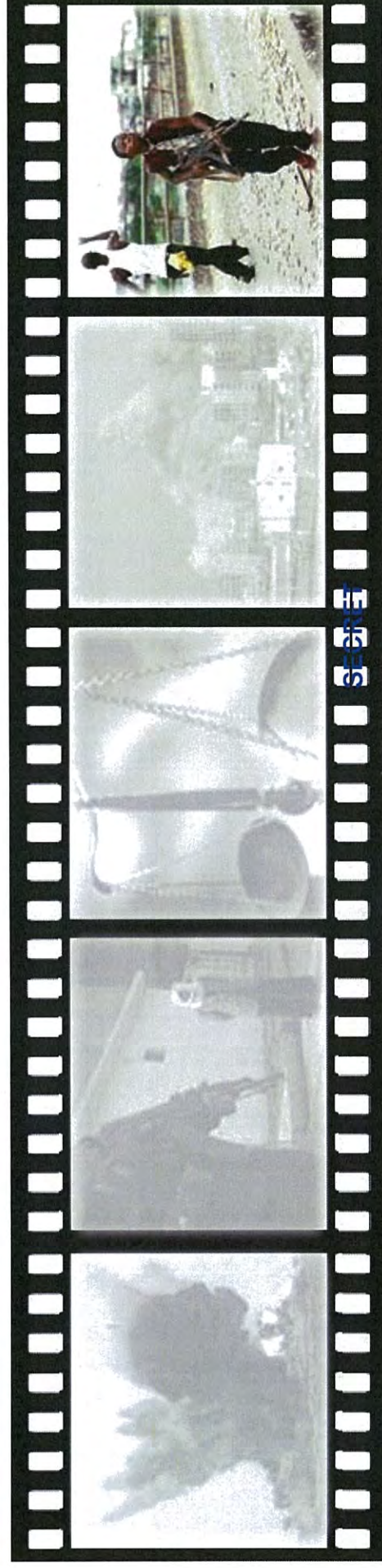
- You must distinguish between legitimate military objectives (which can be attacked) and protected civilian objects (which cannot)
- In this operation, you must distinguish between civilians who are directly participating in hostilities and those who are not



LOAC Principles

Principle 5: Non-discrimination

- You must not discriminate on the basis of race, colour, religion, wealth, gender and political opinion
- NZDF complies with LOAC even if insurgents do not



Code of Conduct

- Fight only opposing forces.
- Attack only military objectives and destroy no more than the mission requires.
- Do not use weapons that are prohibited.
- Do not alter your weapons or ammunition to cause unnecessary suffering.
- Treat all civilians and persons deprived of their liberty humanely, **prohibit prohibited weapons** abuse, and respect their property.

Code of Conduct

- Collect and care for the wounded and sick, whether friend or foe.
- Respect medical and religious personnel, cultural objects and places of worship.
- Respect the use of protective emblems, symbols and markings.
- Do not fight treacherously.
- Uphold LOAC by prevent and reporting violations.

Respect for Islam

Handling of Muslim remains

- Non-Muslim must not perform the burial rites for a dead Muslim.
- One must not desecrate the remains by burning or mutilating it.
- One should not allow the remains to be eaten by birds or animals.
- One should not remove the clothes of a Muslim including a Muslim fighter KIA (killed in action).
- The remains must be buried within 72 hours at a maximum.

Command Responsibility

- A commander will be held responsible if he or she:
 - Knows or should know his or her subordinates are going to commit war crimes and does not prevent them.
 - Knows or should know his or her subordinates have committed war crimes and does not punish them.

Incident Reporting

- CDF is to be informed at the first available opportunity of all incidents relating to:
 - Direct action against suspected insurgents by TF 81
 - The capture of detainees by TF 81 or CRU/ANSF with TF 81 in support
 - No detainee captured by TF 81 may be handed over to any other authority without CDF approval

Superior Orders

- As a member of the armed forces you must obey **lawful** orders.
- If you obey a manifestly unlawful order you are committing a war crime and the order is not an excuse.



RULES OF ENGAGEMENT

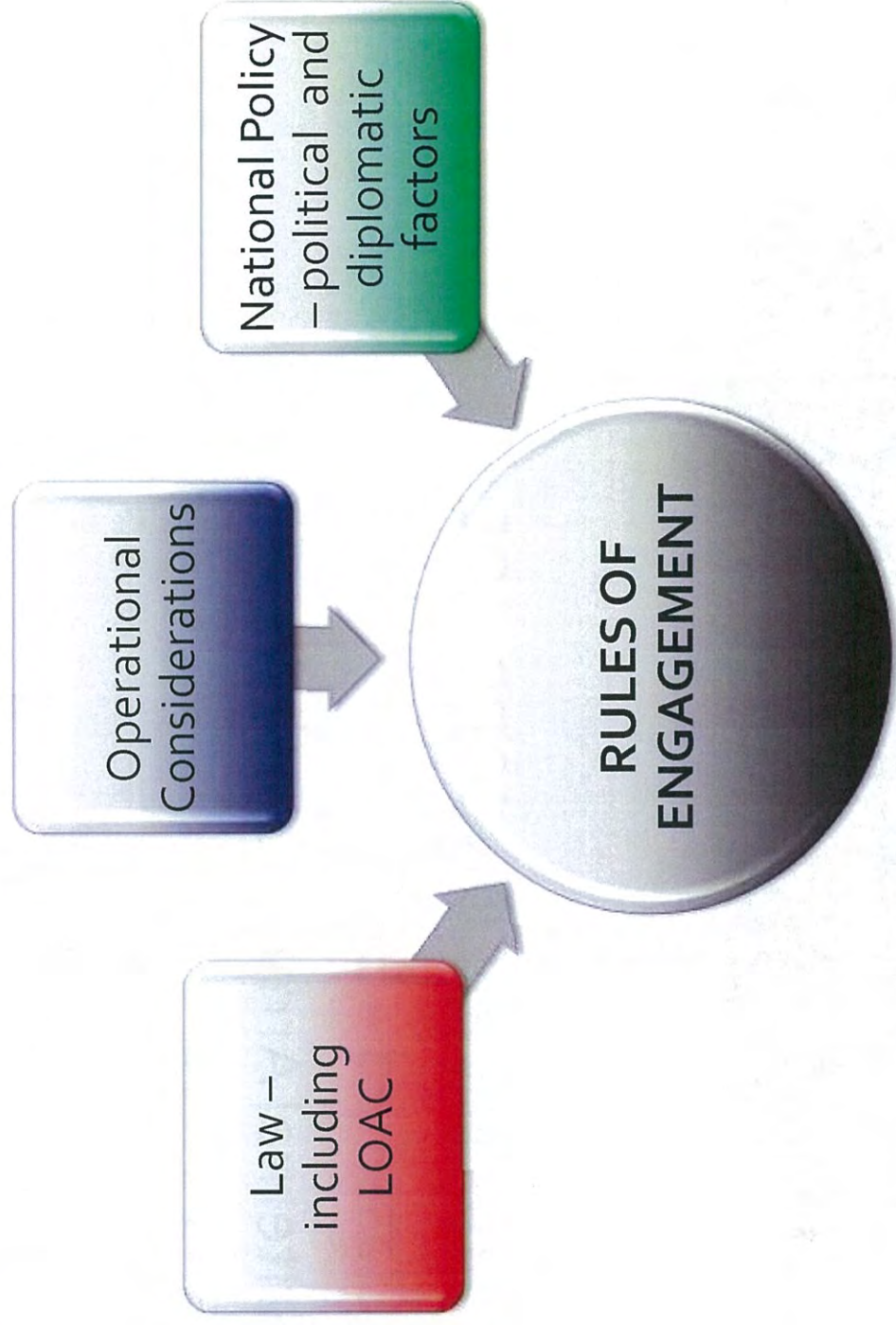
PART TWO

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Rules of Engagement

- Your ROE are orders from CDF and have been approved by the Prime Minister
- Your ROE delineate the circumstances and limitations within which you may use force
- Your ROE do not exceed what LOAC permits
 - They must not be interpreted in a way that exceeds LOAC

Rules of Engagement



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Rules of Engagement

- OP WĀTEA
 - Different to CONCORD ROE
 - Classified – SECRET
 - Internal Armed Conflict
 - ROE Card
 - Detention Card

Rules of Engagement

- **Designated persons means:**
 - All members of ISAF other than TF 81;
 - All members of the CRU while they are acting in cooperation with ISAF;
 - All members of the ANSF while they are acting in cooperation with ISAF;
 - Any persons designated by either the Commander ISAF (COM ISAF), or Commander ISAF Special Operations Forces (COM ISAF SOF), and approved by the Commander Joint Forces NZ (COMJFNZ); and
 - Any persons designated by COMJFNZ in respect of a national task.

Rules of Engagement

- Designated property means property (including areas) designated by:
 - COM ISAF, or COM ISAF SOF, and approved by COMJFNZ; or
 - COMJFNZ in respect of a national task.

Rules of Engagement

- **Hostile act** means the use of force by any person or group against one or more members of TF 81, **designated persons** or **designated property** where death or serious injury is likely to result.
- **Hostile intent** means that there is an imminent intent to commit a **hostile act**. The existence of **hostile intent** may be judged by either:
 - The threatening individual or unit's capability and preparedness to inflict imminent or immediate damage; or
 - Information, particularly intelligence, which indicates an intention to conduct an imminent or immediate attack.

Rules of Engagement

- **Minimum force** means the minimum degree of force that is necessary, reasonable and lawful under the circumstances to achieve the objective. It includes the full range of force, up to and including **deadly force**.
- **Self defence** means the use of reasonable force to protect any member of TF 81 or any other **designated person** against a **hostile act** or **hostile intent**.

Rules of Engagement

Specific Authorised ROE:

- Use of minimum force, up to and including deadly force, is permitted for individual or unit self defence or in defence of designated persons against a hostile act or demonstration of hostile intent
- Use of minimum force, up to and including deadly force, is permitted in defence of designated property

Rules of Engagement

- Use of minimum force, up to and including deadly force, to achieve the mission is permitted only if CONOPS is lawful
- TF 81 is to comply with LOAC
 - LSO will provide advice on lawful force options for a specific mission

Rules of Engagement

- **PSR(S)3** TF81 Personnel were permitted to use approved weapons system for authorised purposes
- **PSR(S)1** TF81 personnel were authorised to operate within a particular area of operation (AOO). Entry into territory or airspace outside AOO not permitted without requisite approval
- Identification of targets is accepted if made by visual means or **PSR(S)3** or other specified objective means

Rules of Engagement

- Actions which could result in **incidental casualties** and **collateral damage** are permitted if the action is essential for mission accomplishment and the expected **incidental casualties** and **collateral damage** are proportionate to the concrete and direct military advantage anticipated

■ **PSR(S)3**

TF81 personnel were authorised to conduct systematic observations of various areas, places, persons or things by the use of various means

■ **PSR(S)3**

TF 81 personnel were authorised to conduct operations in a particular manner provided they conformed with IHL/LOAC at the appropriate juncture

Rules of Engagement

■ PSR(S)3

Rule permitting specified category of operations only where essential

- Unrestricted carriage of small arms is permitted
- PSR(S)3 The use of certain devices was permitted
- Unrestricted use of visual illumination is permitted

Rules of Engagement

- PSR(S)3 Rule controlling a method of warning
- PSR(S)3 Rule controlling a method of warning
- PSR(S)3 Rule controlling a method of a warning
- Seizure of any property in the possession of a person who is **dettained** is permitted if no member of the **CRU** or **ANSF** is present to effect the seizure

Rules of Engagement

- Questioning of any person who is **detained** is permitted if no member of the **CRU** or **ANSF** is present to conduct the questioning
- Search of any person who is **detained** is permitted if no member of the **CRU** or **ANSF** is present to conduct the search
- Detention of a person is permitted if:
 - No member of the CRU or ANSF is present to detain the person; and
 - The person has demonstrated hostile intent, is committing a hostile act, or is interfering with mission accomplishment.

The person must either be released when he or she poses no further threat to the mission or, with the prior approval of COMJFNG and CDF, handed over to an appropriate Afghan authority.

Rules of Engagement

- Observed indirect fire is permitted
- PSR(S)3 Rule governing use of sensitive equipment
- Unrestricted use of non-explosive land barriers and obstacles is permitted

■ PSR(S)3

Rules governing use of specified non-lethal technique

■ PSR(S)3

Rules of Engagement

■ Specific PROHIBITIONS:

■ Cross border operations PSR(S)3

TF81 personnel were authorised to operate within a particular area of operation (AOO). Entry into territory or airspace outside AOO not permitted without requisite approval

■ Counter narcotics operations

■ PSR(S)3

■ PSR(S)3

Rule governing use of specified non-lethal technique



DIRECT ACTION

PART THREE

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Direct Action

- In an internal armed conflict, all persons not members of the State's armed forces are civilians and entitled to protection against direct attack unless and for such time as they take a direct part in hostilities (DPH)

Direct Action

So what?

- Non-coalition force personnel in Afghanistan are civilians and have protected status under LOAC, even if they are hostile to Afghan Government
- Why? Because this is a situation of internal armed conflict - no one can have enemy combatant status during an internal armed conflict
- HOWEVER, they lose their protected status for such time as they directly participate in hostilities (DPH)

Direct Action

What is DPH?

- There are three categories
- 1. Hostile acts which are likely to cause actual harm to the personnel and equipment of coalition forces
- 2. "The revolving door":
 - Those attempting to be "farmers by day and fighters by night" lose protection from attack even in the periods between hostile acts

Direct Action

3. An individual who is a member of an organised armed group that collectively takes a direct part in hostilities is also DPH for the time that the individual is a member

PSR(S)3

Of forces or groups that had been declared hostile.

Direct Action

3. (cont)

- **PSR(S)3** Forces or groups that had been declared hostile. are directly participating in hostilities
- If you identify **PSR(S)3** Forces or groups that had been declared hostile. personnel they may be engaged (ROE^H)
- However, you may not engage if you believe that they are no longer a member of **PSR(S)3** Forces or groups that had been declared hostile.
- If you're not sure, you must presume they are protected civilians
- They can still be arrested for past crimes

Direct Action

To summarise:

- Persons DPH can be engaged. This includes:
 1. Persons committing hostile acts which are likely to cause actual harm to the personnel and equipment of coalition forces
 2. “Farmer by day, fighter by night”
 3. Persons who have active membership in hostile forces **PSR(S)3** Forces or groups that had been declared hostile.

Direct Action

Exercise: four scenarios to help you think about the legal considerations

These decisions will be made by command – the purpose of this part of the brief is to familiarise you with the decision-making process for targeting

Direct Action - Scenario 1

- There are 10 civilians located in a hut on the far edge of a small village
- 4 civilians are carrying small arms
- One is former **PSR(S)3** Forces or groups that had been declared hostile.
- Two women and three children are also with them
- Their current affiliation is unknown
- What CONOPS would be permissible?

Direct Action - Scenario 2

- There are 10 civilians located in a hut on the far edge of a small village
- 8 are carrying small arms, 1 carrying HE
- Intel indicates one has **PSR(S)3** connections Forces or groups that had been declared hostile.
- They are unaccompanied
- There are an additional 3 armed civilians guarding the hut outside; 2 of which were possibly identified at an **PSR(S)3** trg facility two months ago Forces or groups that had been declared hostile.
- What CONOPS would be permissible?

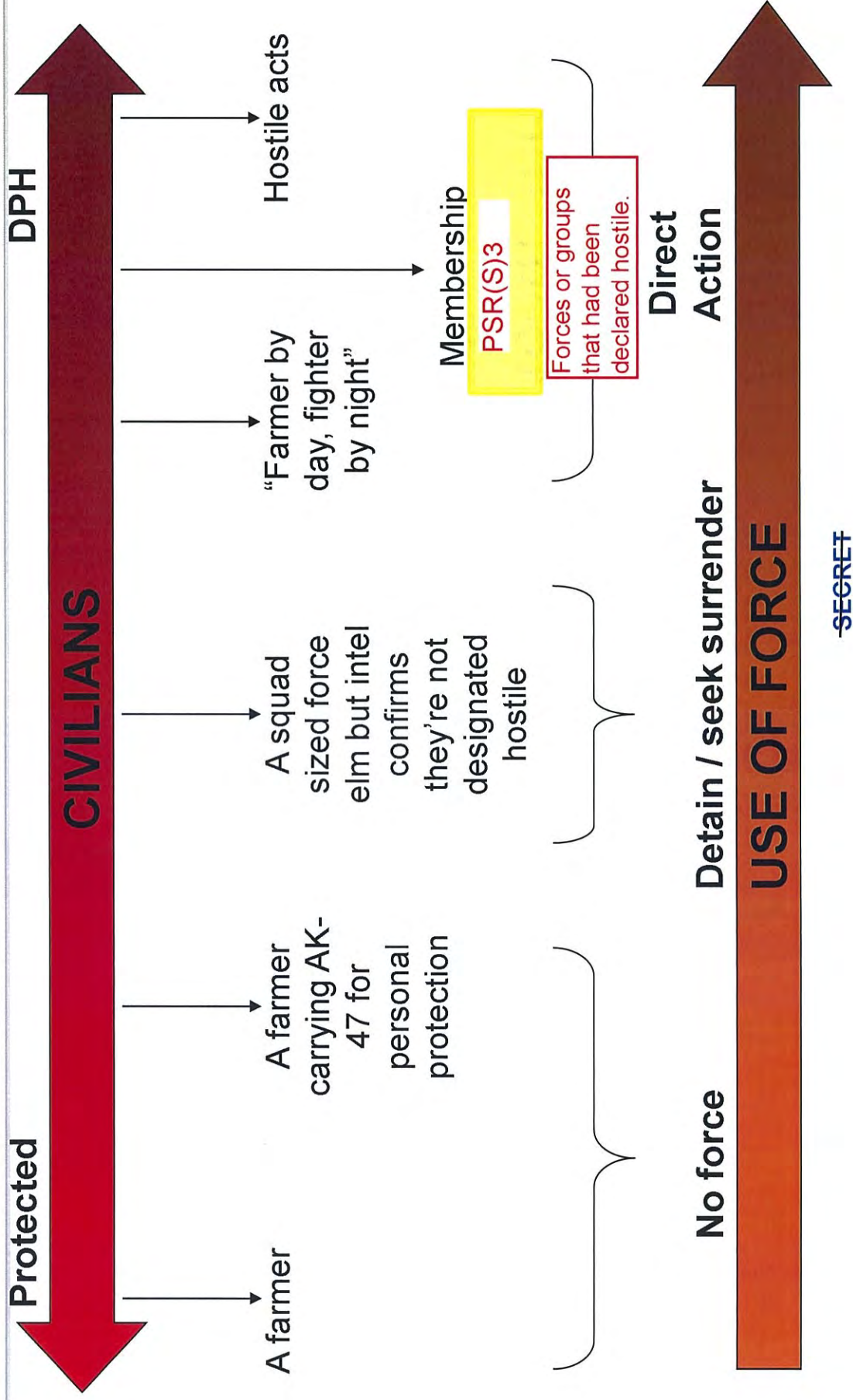
Direct Action - Scenario 3

- 4 armed civilians are carrying 2 large wooden boxes. As you approach them they immediately turn around and walk toward a nearby village. You see that they were initially walking toward a well prepared and concealed gun pit.
- Intel confirms that a group of 3-4 civilians were seen preparing fighting positions outside the village during the previous 2 days.

Direct Action - Scenario 4

- There is a group of unarmed men 100m from your position. You know they have been attacking designated persons during the previous two days. They look battle weary, but they seem indifferent to your presence.

Direct Action - Summary





DETAINEE HANDLING

PART FOUR

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Detainee Handling

- ROE 467: Detention of a person is permitted if:
 - No member of the CRU or ANSF is present to detain the person; and
 - The person has demonstrated hostile intent, is committing a hostile act, or is interfering with mission accomplishment.
- The person must either be released when he or she poses no further threat to the mission or, with the prior approval of CDF, handed over to an appropriate Afghan authority.

Detainee Handling

- **LOAC requirements**
- Common article 3 to the Geneva Conventions – humane treatment
- Treatment
 - Food and water
 - Health and hygiene
 - Protection against environment
 - Practise of religion
 - Women and children
 - Medical care

Detainee Handling

- Prohibitions:
 - Violence to life and person
 - Hostages
 - Outrages upon personal dignity
 - Sentences and executions
 - Collective punishment
 - Threats

Detainee Handling

- ISAF procedures for detainees
 - Handover
 - Search
 - Questioning
 - Release
- Assisting/supporting the CRU and wider ANSF
- Issues

Questions?

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Prohibited Weapons

- Anti-personnel mines
- Chemical/biological weapons
 - CS Gas as a method of warfare
- Cluster munitions
- Laser blinding weapons



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