

Questions relating to Operation Enduring freedom

2011



Can the Minister confirm that Operation Enduring Freedom has the legal backing of regular, renewed mission mandates as decided by the Security Council?

Are the resolutions behind Operation Enduring Freedom (1368 and 1373) time-sensitive; are they still considered to give OEF cover, or are there more recent resolutions that give cover, and is there any concern over this particular issue now or likely to arise in the not-too-distant future?

Which member states' self-defence rights are being exercised under article 51 of the UN Charter through Operation Enduring Freedom in Afghanistan, 8 years after Security Council resolution 1368?

Legal basis for Operation Enduring Freedom (OEF)

- Operation Enduring Freedom (OEF) is the U.S.-led coalition formed to combat terrorism after 9/11. It is a broad operation that has deployments in Afghanistan but also elsewhere in the Africa, South Asia and Middle East regions. New Zealand has previously deployed Special Forces, naval and air force assets to Afghanistan and the region as part of OEF.
- The original legal basis for OEF drew heavily on the right of self-defence. Article 51 of the United Nations Charter states that:

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security...."

- The relevance of this right was recognised in the two UN Security Council resolutions that immediately followed 9/11:

- UNSCR 1368 (12 September 2001)

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security;...

3. *Calls* on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks...

4. *Calls also* on the international community to redouble their efforts to prevent and suppress terrorist acts...

- UNSCR 1373 (2001) reaffirmed

"the inherent right of individual or collective self-defence" and

"the need to combat by all means, in accordance with the Charter of the United Nations threats to international peace and security caused by terrorist acts."

- The right of self-defence therefore exists independently of UN resolutions though it does need to be exercised consistently with the Charter.
- UNSCR 1368 and 1373 remain current as they call on states to bring to justice perpetrators of the 9/11 attacks and to prevent further terrorist attacks.
- OEF has never operated under a formal UN mandate. However, in several recent resolutions the Security Council has effectively endorsed the mission in Afghanistan and acknowledged that it has a role that is distinct from the International Security Assistance (ISAF) mission:
 - UNSCR 1776 (2007) and 1707 (2006) have called on ISAF to "work in close consultation with" OEF in carrying out its mandate.
 - In UNSCR 1868 (2009) the Security Council provided even more explicit support for OEF, calling upon the Afghan Government,

"with the assistance of the international community, including the International Security Assistance Force and Operation Enduring Freedom coalition, in accordance with their respective designated responsibilities as they evolve, to continue to address the threat to the security and stability of Afghanistan posed by the Taliban, Al-Qaida, illegally armed groups, criminals and those involved in the narcotics trade....".
- The key point to be drawn from recent resolutions is that the threat to international peace and security posed by Al Qaeda and related groups in Afghanistan is still present. UNSC resolutions have endorsed OEF's ongoing role to this end.
- An important difference from 2001 is that the OEF now operates in Afghanistan with the consent of the Afghan government.

Basis for New Zealand involvement in past missions

- In the past New Zealand has relied on UNSCR 1368 and 1373 and the right of collective self-defence as the basis for its OEF deployments in Afghanistan. In August 2003 the New Zealand Defence Force entered into Military Technical Arrangements with Afghan Transitional Authority. Since that time, the NZ Provincial Reconstruction Team, staff officers with ISAF HQ, NZDF personnel providing training assistance to the Afghan National Army, and other New Zealanders providing humanitarian and reconstruction assistance to Afghanistan on behalf of the NZ Government have been in Afghanistan with the consent of the Afghan government.

- Any future deployment of NZ forces to Afghanistan under OEF would need to take place with the express or implied consent of the Afghan government.

Other countries involved in OEF in Afghanistan

As of January 2009, non-US OEF contributors include UK, Australia, Canada, Japan, Spain, France and the Czech Republic.

Future New Zealand SAS deployment

The briefing provided below, prepared by the Legal Directorate of NZDF, is limited to what can be released in an UNCLASSIFIED format. Any decision to deploy the NZSAS to Afghanistan will be made by Ministers based on detailed advice provided at the SECRET level. From the perspective of operational security, NZDF would prefer for minimal official comment to be made about NZSAS deployments in the public domain, notwithstanding the current speculation in the media.

- If the NZSAS were deployed, it would do so under the ISAF mandate, namely UNSCR 1386 (2001), 1510 (2003) (for any operations outside Kabul), and 1833 (2008) (pending a further resolution extending the mandate beyond 13 October 2009)
- Any proposed command and control arrangements and rules of engagement would be classified SECRET for reasons of operational security.
- While operating as part of ISAF, NZ forces are covered by the ISAF Military Technical Agreement with the Afghan government and a range of other agreements and arrangements between New Zealand, NATO and the ISAF Member States.
- NZDF has had a detainee handling policy for NZ forces operating within ISAF since 2007, which essentially reflects the relevant ISAF standard operating procedure and is consistent with international law and the protection of NZ's national interests.

Ministry of Foreign Affairs and Trade
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- The original legal basis for OEF drew heavily on the right of self-defence under Article 51 of the United Nations Charter.
- The relevance of this right was recognised in the two UN Security Council resolutions that immediately followed 9/11: UNSCR 1368 (12 September 2001) and UNSCR 1373 (2001).
- UNSCR 1368 and 1373 remain current as they call on states to bring to justice perpetrators of the 9/11 attacks and to prevent further terrorist attacks. Subsequent UNSC resolutions have endorsed OEF's ongoing role in this regard.
- In the past New Zealand has relied on UNSCR 1368 and 1373 and the right of collective self-defence as the basis for its OEF deployments in Afghanistan.
- As of January 2009, non-US OEF contributors include UK, Australia, Canada, Japan, Spain, France and the Czech Republic.
- Any future deployment of NZ forces to Afghanistan would take place with the express or implied consent of the Afghan government and be consistent with relevant international law.