

OP WAATEA 03130/LEGAL

9 Jul 10

CDF (Through: COMJFNZ)

SNO COMMENT: ROEREQ 004: DEFENCE OF NON-ISAF PERSONNEL

References:

- A. OP WAATEA 03130/LEGAL dated 8 Jul 10
- B. PSR(S)1
- C. NZDF 03130/DSC/2 CDF Operational Directive 21/2009 dated 24 August 2009

1. Ref A (enclosed) is a ROREQ to ensure that TF81 is able to protect non-ISAF personnel in the required circumstances. Noting the limitations of the current ROE, I concur with the legal opinion that the ROE requires amendment PSR(S)1 and enable TF 81 personnel to unhesitatingly act in the protection of non-ISAF personnel.

2. The COIN operating environment is population centric and focuses on conducting operations with the primary aim of protecting the civilian population. In my view, the NZ ROE should reflect the operating environment that TF 81 is confronted with. Accordingly, pursuant to Ref B, please consider ROEREQ 004.

PSR(IC)3

SNO OP WAATEA

Enclosure:

- 1. OP WAATEA 03130/LEGAL dated 8 Jul 10

8 Jul 10

SNO

ROEREQ 004/2010: DEFENCE OF NON-ISAF PERSONNEL

References:

- A. ROE IMPLEMENTATION for JFC BRUNSSUM OPLAN 30302 REVISION 1, DTG:031335Z MAY 06
- B. NZDF 03130/DSC/2 CDF Operational Directive 21/2009 dated 24 August 2009

BACKGROUND

1. TF 81 is actively engaged in counterinsurgency operations in Afghanistan. A fundamental principle of COIN operations is protection of the civilian population. NZ ROE does not specifically provide for defence of Afghan civilians, NGOs or other agencies operating in Afghanistan. The NATO ISAF ROE includes provision for the protection of non-ISAF individuals in circumstances where life is endangered or serious bodily harm is likely.
2. Given the COIN operating environment and the emphasis on protection of civilians, this ROEREQ will contend that the NZ ROE should be amended to ensure that NZ service members can unhesitatingly act to protect non-ISAF personnel in the right circumstances.

NZ ROE

3. In relation to defence of personnel NZ ROE provides:
 - a. **A** 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**.
 - b. **AC** Action to secure the recovery of **PSR(S)3** taken hostage is permitted with the prior approval of **PSR(S)3**
4. Designated persons are defined in the NZ ROE as follows:
 - a. vi. **Designated persons** means:
 - a) All members of ISAF other than TF 81;
 - b) All members of the CRU while they are acting in cooperation with ISAF;
 - c) All members of the ANSF while they are acting in cooperation with ISAF;

- d) 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
- e) Any persons designated by COMJFNZ in respect of a national task.

5. There is currently no ROE that provides for protection of Afghan civilians including TF 81 interpreters, NGOs or other non-ISAF personnel in theatre that TF81 may work alongside. TF 81 personnel will have to rely on NZ domestic law in relation to self defence in the event that they are called upon to defend civilians or other individuals not specifically designated. In the context of ROE, and use of force as an arm of the State, it is recommended that a comprehensive set of rules of engagement is utilised so that service members do not have to refer to two legal mandates in respect to the use of force.

6. In addition, TF81 is designated for immediate response tasks within Kabul. Accordingly, TF81 may be tasked to assist local ANP/ANA units deal with incidents as they arise, for example, those incidents dated 18 Jan 10 and 26 Feb 10. Spectacular attacks such as those mentioned often result in substantial loss of civilian life, and ISAF forces responding to such attacks should be able to do so on the basis of protecting non-ISAF personnel.

NATO ISAF ROE

7. NATO ISAF ROE specifically provides for the use of force to protect Non-ISAF personnel as follows:

- a. **PSR(S)3, PSR(S)1, PSR(S)2**

RECOMMENDATIONS

8. It is recommended that you submit to CDF through COMJFNZ, for an addition to the NZ ROE profile to ensure that the civilian population is able to be protected, and that our ROE is consistent with NATO ISAF ROE.

9. It is recommended that a similar drafting approach to that used by NATO ISAF be adopted, i.e.

- a. Use of minimum force to defend non-ISAF individuals from an act which endangers life or is likely to cause serious bodily harm is authorised.

PSR(IC)3

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TF81 LSO

