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NEW ZEALAND DEFENCE FORCE
COVER SHEET

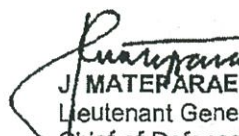
To accompany documents to
Minister of Defence

DSO <u>51</u>
CLASSIFIED DOCUMENT
Received: <u>15 DEC 2009</u>
File No: <u>3130/DSO/4</u>
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Subject:	OP WATEA Rules of Engagement		
NZDF File No.	NZDF Tracking # NZDF 03130/DSC/WATEA (For OCDF Use Only) <u>504/09</u>	Minister's Tracking#: (For Minister's office)	
Priority:	ROUTINE	Request Ministerial response by:	
Contacts:	1. Air Commodore K. Short 2. Colonel P. Kelly	Tel: PSR(S)3 Tel:	A/H:

Sheet not to exceed one page. Please complete shaded areas.

Purpose:	To request the Minister to endorse an amendment to the OP WATEA rules of engagement, and seek the Prime Minister's approval.
Recommendations:	That the Minister endorse the amendment to ROE H to read: "Attack on individuals, forces or groups directly participating in hostilities in Afghanistan against the legitimate Afghan government, including PSR(S)3 , is permitted. ... AMPL/2/Positive confirmation by PSR(S)3 that a target is directly participating in hostilities is required.
MOD/NZDF Consultation	Not required: Operational request. Other Agencies:
Minister's comments:	<i>I have now been fully briefed on the change, including a discussion on the concept of operations. As a result I am satisfied that the new ROE meets two criteria: a) It complies with New Zealand legal requirements b) It meets the operational requirements of OP WATEA & NATO/ISAF</i>
Minister's Action:	Signed / Noted / <u>Agreed</u> / <u>Approved</u> / Declined Referred to:
Signature:  Date: <u>14 DEC 09</u>	


J. MATEPARAE
Lieutenant General
Chief of Defence Force

Date 7 Dec 09

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NEW ZEALAND DEFENCE FORCE

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NZDF 03130/DSC/WATEA

7 December 2009

Minister of Defence

AMENDMENT TO OP WATEA RULES OF ENGAGEMENT

C 1. The purpose of this note is to request you to amend rule H of the current OP WATEA rules of engagement (ROE). Commander Joint Forces New Zealand has advised me that the current rule is creating an interoperability difficulty for TF 81 and there is concern within ISAF that the NZ ROE is not as suitable to CTF tasks as other coalition contributors who have adopted the ISAF ROE in its entirety. This is particularly so in relation to the specific tasking to TF 81 to be prepared to conduct direct action tasks against insurgent networks in support of ISAF and the Government of Afghanistan.

2. The current ROE rule governing direct action provides:

H Attack on PSR(S)3 is permitted, as they have been declared hostile.

C 3. ISAF rules, in comparison, 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. These rules are comprised in PSR(S)3 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 the PSR(S)3 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 PSR(S)3 attackers.

4. ROE H in its present form has been viewed as partly inconsistent with the mission of TF 81, "to maintain stability, defeat the insurgency, assist the Crisis Response Unit (CRU) and enhance the reputation of the NZDF and GONZ". It is considered that the inconsistency could impede the ability of TF 81 to undertake at least part of its mission, namely to defeat the insurgency. The new ROE effectively broadens the application of force provisions to more effectively support the successful accomplishment of the mission.

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5. The proposed amendment to the ROE is to authorise TF 81 to attack individuals, forces or groups directly participating in hostilities in Afghanistan against the legitimate Afghan government. In order to ensure compliance with international law, particularly the protections afforded to civilians and non-combatants, the specific internationally recognised phrase "directly participating in hostilities" has been used in the proposed ROE. The phrase is drawn from Additional Protocol I and II to the Geneva Conventions, which provides the right to protection from attack for civilians in an international armed conflict and non-international armed conflict, respectively.

6. These protections are forfeited by civilians "unless and for such time" as they take a direct part in hostilities. This forfeiture caveat is an important condition. The proposed ROE amendment is deliberately phrased in the current tense ("participating") to ensure that the authorisation to attack would not extend in the past tense to those who had "participated" (past tense) in hostilities. This is consistent with the terminology used in the Additional Protocols.

7. The new ROE does not specifically categorise **PSR(S)3** as being automatically qualified as the target of a direct action, and the words "as they have been declared hostile" have been removed from the ROE. This however, does not have the unintended effect of narrowing the application of the ROE.

8. The use of the phrase "declared hostile" does not apply consistently with the concept of operations currently being executed by ISAF. The proposal to remove it as part of ROE **H** does not in itself detract from ROE **H**, and there is no legal impediment to its removal. The removal of the phrase also assists with abating concerns expressed by COMISAF that categorising groups specifically as hostile too closely resembled the historic OP ENDURING FREEDOM mandate to neutralise an identified enemy.

9. The removal of the specific reference to **PSR(S)3** does not narrow the ROE. In accordance with ISAF target identification and verification procedures, groups or force elements will be identified as appropriate targets once they have satisfied the appropriate criteria for prosecution by deadly force. It is entirely consistent with the method of operation of **PSR(S)3** personnel that such force elements will qualify, based on available intelligence, for inclusion on the ISAF targeting list (Joint Prioritised Effects List). The proposed new ROE will allow such targets to be prosecuted once confirmation of direct participation in hostilities has been achieved.

10. It is also proposed to include, by way of amplification, an approval level for direct action tasks, aligning them with the ISAF process for such approvals in the **PSR(S)3**. This 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. The ISAF ROE approval authority is held by COMISAF, or where there is a time-sensitive or "hasty" situation, a Task Force Commander of Colonel rank or above has authority to approve the ROE on a case-by-case basis limited in time and scope. This approval requirement does not alter the status of command of TF

81 or in any way affect the other constraints I have imposed in the form of prior approval for other sensitive operations.

11. Similarly, it is also proposed to ensure an independent level of NZ assessment is required before a target is identified for attack under ROE **H**. This will alleviate any concerns that may exist about the veracity that can be associated with the ISAF targeting list, and whether the presence of an individual or group on that list represents a satisfactory confirmation that that individual or group is directly participating in hostilities. This guarantee of NZ assessment will ensure that the ISAF targeting list serves only as a 'categorisation', and will necessarily require positive NZ legal input in terms of confirmation that the intended target is directly participating in hostilities before an attack by TF 81 can be initiated.

12. It is my belief that the proposed changes will enhance TF 81's ability to successfully prosecute and achieve its mission. If you agree with these amendments, it is recommended you:

- a. **endorse** the following ROE to replace the existing OP WATEA ROE **H** and
- b. **seek** the approval of the Prime Minister to do the same.

13. The amended wording is:

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

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

AMPL/2/ Positive confirmation by **PSR(S)3** that a target is directly participating in hostilities is required.


J. MATEPARAE
Lieutenant General
Chief of Defence Force

ENDORSED



HON DR. WAYNE MAPP
Minister of Defence

APPROVED



HON JOHN KEY
Prime Minister

