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FROM: MAIN HQ 1 (UK) Armd Div, BASRAH International Airport, IRAQ

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PRECEDENCE: ROUTINE

DTG: ■ 1800DAPR03

Law and order

FRAGO 100 - 1 (UK) ARMD DIV DAILY MISCELLANEOUS FRAGO

Time Zone Used Throughout the Order: DELTA.

G3

1. Joint Military Committee.

a. JOINT MILITARY COMMISSION (JMC). GOC HQ 1 (UK) Armd Div has recently created the JMC. Though its terms of reference and mission are still being defined by both the operational chain of command and the NCC, likely tasks may include:

- (1) Assess extent of surviving military infrastructure and develop basing plan for INDF.
- (2) Collect/salvage heavy weapons and other military equipment from former IZ military to contribute to re-equipping the INDF.
- (3) Develop proposal for structure and Military Table of Equipment (MTOE) of INDF.
- (4) Develop personnel strategy including, career and manning (recruitment/retention/reserves), conditions of service, rates of pay that are coherent across country and other employment sectors and mechanism for paying military.
- (5) Identify doctrine for INDF.
- (6) Develop training plan including individual, collective, branch and leadership Programs of Instruction (POIs), training locations and rotation.
- (7) Develop logistic support plan based on depot policy and including necessary industrial base.

b. The Div team will consist of the following team members:

- (1) OC - Maj Scott (PARA).
- (2) G2 - Maj Morrell (Int Corps).
- (3) Armour - Capt Davies (QRL).
- (4) Three more staff officers to cover Inf, Engr and ES are being sourced by G3 O&D.

2. 3 Cdo Bde, 7 Armd Bde, 16 AA Bde, 102 Log Bde and DSG are to identify a JMC rep and this should filter down to BG level. Once identified details of the reps are to be passed to the Div JMC cell on Ptarmigan 3201345.
3. The Div JMC team will visit each formation within the next few days to brief the formation Staff and nominated Offr with current information.

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4. In order to further assist the Brigades, a further guide to Law and Order is attached (Annx A) together with a Commanders' Aide-Memoire on 'Property in Occupation' (Annx B) and a guide to the structure of the Courts in the Provinces of BASRAH and MAYSAN (Annx C).

Ack:

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Annexes:

- A. Law & Order.
- B. Property.
- C. Court Structure.

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ANNEX A TO
HQ 1 (UK) ARMD DIV FRAGO 100
DTG 141800Z APR 03

LAW AND ORDER

INTRODUCTION

1. Guidance has already been provided on law and order to the Brigades in FRAGOs 079 and 091. This outlined the Brigade Powers in respect of law and order generally (FRAGO 079) and also gave specific guidance in relation to looting (FRAGO091).
2. Obviously, the restoration of Law and Order is an evolutionary process and unanticipated questions arise as events unfold. Advice can be obtained from Div Main at any time and further direction will be provided whenever required. In addition, 7 Armd Bde and 16 Air Asslt Bde now have lawyers attached to answer immediate questions.
3. However, in the meantime, I have attempted to answer a number of questions that have been raised in the past week.

A. CIVIL POLICE

ARMING OF CIVIL POLICE

4. This is permitted. However, the intention is that the Iraqi civil Police eventually should just carry side arms

ROE FOR CIVIL POLICE

5. The civil police should adopt the same ROE as UK Forces in relation to the maintenance of law and order. This means that minimum force should be used in maintaining law and order and lethal force is only justified in self-defence (however see intervention below). Self-defence includes defence of colleagues. It is important that the Iraqi civil police operate on the same ROE not only to prevent confusion on patrol but also to prevent UK Forces from potentially having to take action against Iraqi Forces for the unlawful use of force.

B. LAW AND ORDER

INTERVENTION TO PREVENT A CRIME

6. Under UK law and the ROE it is permitted to intervene to prevent a crime from taking place. The minimum necessary force required is permitted but this could include

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lethal force if absolutely necessary in the circumstances (in reality a warning shot would probably suffice). This also applies to the Iraqi civil police.

CAR THEFT

7. It has been reported by one unit that they suspect that a number of cars have been stolen and guidance has been sought on what to do if such cars are stopped at a VCP. Under the ROE there is the power to temporarily detain a person if they are a threatening the Coalition mission and this would include theft as this, and other crimes, leads generally to a breakdown in law and order. In such circumstances, if the suspect cannot verify ownership, the suspect should be temporarily detained and the RMP called to the scene. The RMP can then attempt to resolve the matter and take the appropriate action. However, RMP resources are not infinite and the matter should be resolved at the scene if possible.

CARRIAGE OF WEAPONS

8. A Theatre policy on the carriage of weapons has not yet been issued. This will have to be co-ordinated across the UK AO. In the meantime, no action should be taken against someone for simply carrying a weapon unless a crime is being committed. (However, see combatants below)

C. COMBATANTS

9. The Law of Armed Conflict still applies even though we are in Phase 4. The Law of Armed Conflict co-exists alongside our responsibility, as the Occupying Power, to restore law and order. However, whereas the maintenance of law and order means working from the principle of minimum force upwards, the Law of Armed Conflict works the other way around (although acknowledging the need for proportionality) and it means that combatants can still be attacked and captured at will. (note)

10. Under the ROE, combatants are defined as Iraqi Regular Armed Forces, RGFC, Special RGFC, DGS, SSO, DMI, Fidayin Saddam, Al Quds and MEK. In addition, members of the IIS, DGI and Ba'ath party are combatants if and for such time as they take part in hostilities. Therefore, if any Brigades come across any of these persons they may be captured (or engaged if necessary) and should then be handed over to the PWHO

11. In addition, if there is any doubt as to the status of such persons when captured then, under International law, they are to be treated as PWs until such time as a competent tribunal determines otherwise. Where there is no doubt as to the status of a civilian they should be handed over to the RMP if they have committed a crime.

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D. GUARDING OF RESTRICTED AREAS/DESIGNATED PROPERTY

12. If you are guarding a restricted area and/or designated property then the use of force is permitted to protect such area or property. Designated property includes structures essential for the maintenance of public order (police stations/prisons), health and hygiene, electricity generation and distribution, oil infrastructure and port facilities. Other mission essential structures may be designated but the use of minimum force is permitted in the guarding of such facilities. This may include lethal force if necessary in the circumstances and the right of self-defence would apply.

CONCLUSION

13. The obligation upon the Occupying Power to restore public order and safety imposes a peculiar burden upon UK Forces to act as both policemen and combatants simultaneously. However, as long as it is remembered that the restoration of law and order requires soldiers to react using the minimum force necessary but that the Law of Armed Conflict exists simultaneously then soldiers are unlikely to go wrong. Further ROE for Phase IV will be issued in due course.

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ANNEX B TO
HO 1 (UK) ARMD DIV FRAGO 100
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COMMANDERS AIDE MEMOIRE

PROPERTY

1. Now we are in Phase 4 of OP TELIC and UK Forces are in Occupation of parts of BASRAH and MAYSAN Provinces there will clearly be need to use property other than property belonging to UK Forces.

2. Under the Law of Armed Conflict, there are rules which apply to the use and seizure of property which need to be understood by Brigades. This will enable the Brigades to take advantage of certain property and, at the same time, ensure that they remain within the Law of Armed Conflict and do not attract undue criticism.

PROPERTY IN OCCUPATION

3. Whilst in Occupation

a. Private Property must not be confiscated

b. State Property including cash, realisable securities, arms, transport, stores, supplies, fuel stores and any moveable property that is useable for military purposes can be seized without compensation.

c. State Buildings cannot be taken but may be occupied

d. Private Property may be requisitioned but the following conditions apply;

(1) Only where the requisition is required for the needs of the UK Forces

(2) Any requisition must be in proportion to the resources available (i.e. the needs of the civilian or the wider civilian community must be considered)

(3) Any requisition must be authorised by the Occupying Commander (Bde Commander).

(4) Any requisition must be paid for in cash – if this is not possible then arrangements must be made for the payment to be made as soon as practicable.

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(5) Civil Defence assets, necessary for the defence of the civilian population may not be requisitioned.

(6) Special rules for medical property apply (see below)

e. Private Transport may be seized, provided

(1) It is necessary for military reasons

(2) It is not available from State property

(3) Compensation is to be paid in cash at the time of the requisition but if this is not possible appropriate compensation is to be paid to the owner after hostilities have ceased.

MEDICAL PROPERTY

f. Medical Property

(1) No requisition of civilian medical units, material, equipment and services if those resources are necessary for the provision of adequate medical services to the civilian population.

(2) If requisition is permitted then the following conditions apply

(i) The requisition is necessary for the adequate and immediate treatment of wounded and sick forces or EPW's.

(ii) The requisition continues for only as long as absolutely necessary

(iii) Alternative arrangements are immediately made to ensure the continued treatment of the civilian population

(3) The buildings, material and stores of fixed medical establishments shall not be diverted from that purpose provided there is an ongoing need for the care of the wounded and sick.

(4) Hospitals can be requisitioned temporarily for urgent and necessary care of the military wounded only if suitable arrangements are made to ensure the continued care and accommodation of the patients

(5) Any application of medical material must be on the basis of clinical priority only and there must be no discrimination.

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LOOTING

g. Under Section 30 Army Act 1955, looting is an offence under military law. Looting includes;

- (1) Stealing from anyone killed, wounded or captured in the course of warlike operations
- (2) Stealing any property which has been left exposed or unprotected in consequence of warlike operations
- (3) Taking, otherwise than for the public service, any vehicle, equipment or stores abandoned by the enemy

Looting can only be tried by Court -Martial in relation to (1) and (2) above.

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ANNEX C TO
HO 1 (UK) ARMD DIV FRAGO 100
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COURT STRUCTURE IN BASRAH AND MAYSAN PROVINCES

1. As a result of a meeting with an Iraqi lawyer who is now an Iraqi freedom fighter, I have managed to obtain very useful information with regard to the criminal and civil courts in the Provinces of BASRAH and MAYSAN.
2. The criminal and civil courts have a very similar structure and the two systems fuse at certain levels. The structure is depicted below

Assessment Court
(Supreme Court)

Appellate Court
(Court of Appeal)
Basra and Al Kut

House of Justice
Basra and AL
AMARAH

Court of
Investigation

Penalty Court
Primary Court

CIVIL CASES

3. All cases start at the penalty or primary courts and sometimes the two courts are fused. Civil claims are dealt with at the primary courts and small civil claims can be settled at the primary court. Larger civil claims go to the House of Justice which in BASRAH Province is in BASRAH, and in MAYSAN is in AL AMARAH. Appeals

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thereafter go to the Appellate Court which is again in BASRAH or AL KUT if the claim started in MAYSAN. The Supreme Court is in BAGHDAD.

CRIMINAL CASES

4. Criminal Cases start in the Penalty Courts or the Court of Investigation in BASRAH (for cases in BASRAH Province). The penalty court acts as an examining magistrate and can either deal with cases themselves (in the case of minor offences) or refer the case to the House of Justice in cases where the sentence is five years imprisonment or above. There is also a Court of Investigation in Basra to which cases can be referred in the first instance. As with civil cases, appeals go to the Appellate court and thereafter to the Assessment Court in BAGHDAD.

YOUTH COURTS

5. In addition to the Penalty Court and the House of Justice, there is also a youth court (A'Dath) for juveniles under the age of sixteen.

SOUTHERN POLICE COURT

6. I was also advised that there was a Southern Police Court which deals solely with police corruption in BASRAH and MAYSAN.

LOCATION OF COURTS

7. In the Province of BASRAH there are investigation/ penalty courts in UMM QASR, AL FAW, AL SHAT ARAB, AZ ZUBAYR, AL MEDAYNA and AL QURNAH, ABU AL KASEEB together with two in BASRAH. There is also a Law School in BASRAH (useful for research).

8. In the Province of MAYSAN there are investigation / penalty courts in AL AMARAH, AL MAJARR, AL KABIR, MAYMURHAH, KUMAYT, and ALI AL GHARBI.

JUDGES

9. According to the Iraqi lawyer, although judges have to belong to the Ba'ath party, in most cases this is only a superficial allegiance. The reason given was that judges not only have to undergo many years in practise but also have to complete a three year doctorate prior to taking up their appointment. This apparently makes it much harder to corrupt the process as it would mean corrupting the academic process at the same time.

LAW AND ORDER

10. I briefly discussed law and order and was advised that the police responsible for general law and order should be distinguished from the security police. I was advised that

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the ordinary police would be likely to return if they were paid. I also discussed the duties of the Occupying Powers in relation to keeping law and order and the evidential that might arise. I was advised that it would be sensible to talk direct with the judges to find a workable solution in the gathering of evidence and the handing over of suspects to the Iraqi criminal justice system. The Iraqi criminal code also allows for pre trial custody and bail.

CRIMINAL CODE

11. A copy of the Iraqi Criminal Code is available in English and a copy will be available next week. In addition, I am advised there is a proposed amended transitional justice system which has been worked on with the US State Department and a copy will also be made available.

CONCLUSION

12. Although I have not had a chance to verify the information it appears to be authentic and is an optimistic picture. There is clearly a sophisticated criminal and civil justice system and it would greatly assist UK Forces if the Iraqi court system could be used for criminal offences rather than the Court Martial process which is prescribed in International Law. It also appears that dialogue between the judges and UK Forces could further progress and that the restoration of the civil police could be achieved if payment was secured. In the meantime, no attempt should be made to create alternative court structures

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