

MOD-83-0000146-A

## **LEGAL DOCUMENTS**

- 1. INTRODUCTION**
- 2. USE OF FORCE**
- 3. STOP, SEARCH AND DETENTION**
- 4. OCCUPATION**
- 5. PROPERTY**

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LEGAL AIDE-MEMOIRE  
INTRODUCTION

References:

- A. UKNCHQ ROEAUTH OP TELIC 001 dated 18 2359Z Mar 03.
- B. HQ 1 (UK) Armd Div FRAGO 79 DTG 03 1800Z Apr 03.
- C. HQ 1 (UK) Armd Div FRAGO 100 DTG 14 1800D Apr 03.

INTRODUCTION

- 1. Although there has been no specific declaration to the effect that the Coalition Forces have now entered Phase IV, it is clear from the *de facto* situation that the transition to Phase IV is well under way, if not already complete within 1 (UK) Armd Div AOR.
- 2. This aide-memoire provides a guide to the extant legal references together with additional assistance in respect of dealing with the civilian population.

ROE

- 3. Reference A is the extant ROE for the current operational situation. They provide UK Armed Forces the flexibility to deal robustly with all situations ranging from law and order through to combat operations. At Flag 2 to file is a guide to the use of force continuum when dealing with the civilian population. It should be noted that Phase IV specific ROE are in draft although they have not yet been authorised.

TRANSITIONAL GUIDANCE

- 4. Reference B disseminated copies of HQ 1 (UK) Armd Div guidance regarding:
  - a. Annex A – “OP TELIC Phase IV – Public Order and Safety”.
- 5. Reference C disseminated copies of HQ 1 (UK) Armd Div guidance regarding:
  - a. Annex A – “Law and Order”;
  - b. Annex B – “Commander’s Aide-Memoire: Property”; and
  - c. Annex C – “Court Structure in Basrah and Maysan Province”.
- 6. The documents at Flags 2-5, to this file, provide a shortened guide of the above Annexes for ease of reference, they are as follows:
  - a. Flag 2 – Use of Force;
  - b. Flag 3 – Sop, Search and Detention;
  - c. Flag 4 – Occupation; and
  - d. Flag 5 – Property.
- 7. Further information in respect of the above will be provided upon receipt of additional guidance from HQ 1 (UK) Armd Div. In the interim, all legal queries should be addressed to SO2 Legal HQ 16 Air Asslt Bde in the first instance.

USE OF FORCE

ROE

1. UKNCHQ ROEAUTH OP TELIC 001 dated 18 2359Z Mar 03 is the extant ROE for current operations.

PH III ROE

2. Until the cessation of hostilities is declared UK Armed Forces retain the ability to conduct combat operations against positively identified Iraqi military elements (combatants), which have been defined as:

- a. Iraqi Regular Armed Forces;
  - b. RGFC;
  - c. Special RGFC;
  - d. DGS;
  - e. SSO;
  - f. DMI;
  - g. Fidayin (Fedayin) Saddam;
  - h. Al Quds;
  - i. MEK;
  - j. IIS;
  - k. DGI; and
  - l. Ba'ath Party.
- ] --- If and for such time as they partake in hostilities.

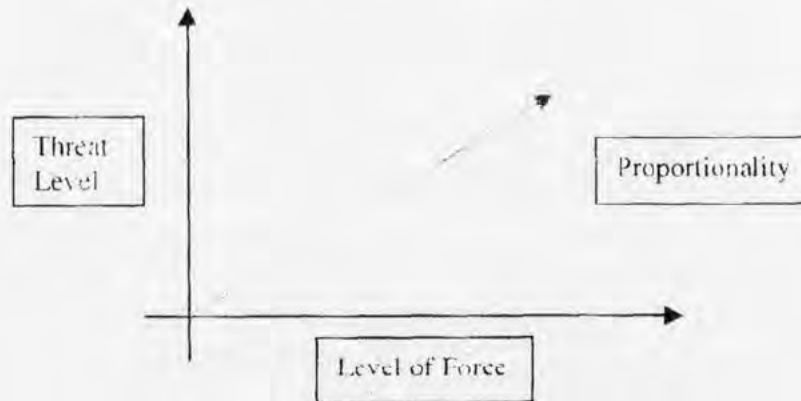
ROE RE CIVILIAN POPULATION

3. As the UK AOR transitions from Ph III to PH IV operations there is an increasing requirement for UK Armed Forces to fulfil its International Law obligations in respect of maintaining public order and safety.

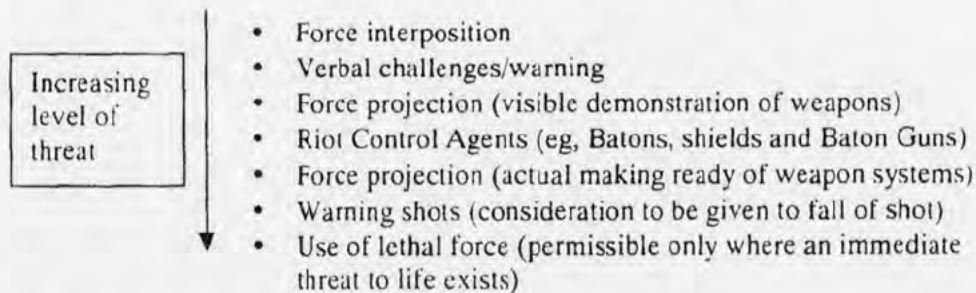
4. In accordance with the Law of Armed Conflict the civilian population (civpop) is to be distinguished from lawful combatants as "Protected Persons". To this end, the principle of minimum force is to be utilised in all dealings with the civpop.

5. Whilst Reference A provides sufficiently robust ROE for the maintenance of law and order, vis-à-vis the Iraqi civpop, there is detailed below is a "Use of Force Continuum" by way of additional guidance for close contact dealings with the civpop. This provides for the escalation in use of force dependant upon the prevailing circumstances, eg, from a minor disturbance through to an immediate threat to life:

Use of Force Continuum



6. The "Use of Force Continuum" can be further illustrated as follows:



RIOT CONTROL

7. The use of riot control equipment is authorised by the ROE:

500 CHARLE.

Service personnel may be deployed and use public order control equipment to control PWs and Iraqi non-combatants. Batons, riot control clothing and baton rounds may be employed.

8. Reasonable force in the circumstances may be used in effecting riot control and maintaining public order.

PREVENTION OF CRIME

9. UK domestic law, (which applies to all UK Armed Forces through the Service Discipline Acts) together with the ROE, provides that minimum force in the circumstances can be used to prevent a crime. The power for this is derived from the fact that prevention of crime is consistent with the Coalition mission and the Coalition's international obligation to maintain public order and safety.

CAR THEFT

10. There have been a number of reported thefts of vehicles within the UK AOR. UK ROE allows for the searching and detention of persons posing a threat to the

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Coalition mission. The prevalence of car theft amounts to a potential threat to the Coalition mission and therefore the ROE can be used as authority for the stopping, searching and detention of those persons suspected of being involved in car theft. As indicated above, the minimum force necessary, in the circumstances, to achieve the aim of apprehending such suspects must be used. The detention of a suspect is to be in accordance with the guidance provided for at Appendix 2 to the Legal Aide Memoire.

GUARDING OF RESTRICTED AREAS AND DESIGNATED PROPERTY

11. Minimum force may be used to protect restricted areas and designated property, in particular from looters. Designated property includes structures essential for the maintenance of:

- a. public order (police stations/prisons);
- b. health and hygiene;
- c. electricity generation and distribution;
- d. oil infrastructure; and
- e. port facilities.

12. The "Use of Force Continuum", as described above, should be exercised whilst protecting such property and lethal force should only be used where there is an immediate threat to life and there is no other way of preventing that threat.

SELF DEFENCE

13. Nothing contained within the ROE, or within this guide, inhibits the UK Armed Forces inherent fundamental right to utilisation of force in self-defence. This incorporates force up to and including lethal force where there is an immediate threat to life.

CONCLUSION

14. Any queries in respect of the above guidance should be directed to SO2 Legal HQ 16 Air Asslt Bde in the first instance.

STOP, SEARCH AND DETENTION

STOP AND SEARCH

1. The power to stop, search and detain are the principal powers which are required by the Battle Group Comds in the discharge of their duty to ensure "Public Order and Safety".

2. UKNCHQ ROEAUTH OP TELIC 001 dated 18 2359Z Mar 03 is the extant ROE for current operations. Pursuant to the ROE all soldiers have the power to stop, search and detain:

680 BRAVO (ONE).

Temporary detention of persons posing a threat to Coalition Forces or elements under UK protection or otherwise interfering with or threatening the Coalition mission is permitted.

Notes:

1. This rule only applies to those individuals not otherwise classified as Prisoners of War.

2. PJHQ Legal Adviser and PJHQ J2X are to be informed immediately of detained persons who are assessed as being of high value intelligence (HVI) interest or suspected of involvement in terrorism. Such persons may not be released or transferred to a non-UK holding facility outside of Zone 1, without PJHQ approval.

3. PJHQ Legal Adviser and PJHQ J2X are to be informed immediately of detained persons who are assessed as of high value intelligence interest or terrorists for instructions prior to release.

690 CHARLIE (ONE).

Searching of persons temporarily detained under Rule 680 (One) and their vehicles is permitted without consent.

3. The power to stop, search and detain can be effected either if a person is a threat to force security or where someone has, or is suspected of, committing a criminal offence. Both situations are considered to constitute action that is "interfering with or threatening the Coalition mission".

4. Reasonable force in the circumstances can be used to effect the stop, search and detention. Male personnel should not search females or children under the age of 14 years of age unless an immediate search is imperative for reasons of force security.

5. All searches are to be recorded and search proformas are to be completed as soon as possible after the search. Requests for search proformas should be directed to 156 Pro Coy.

6. Once detained, the individual should be either released or transferred to 156 Pro Coy as soon as practicable and, in any event, within six hours. If the detainee is

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suspected of having committed a specified arrestable offence<sup>1</sup> or is believed to pose a threat to force security he must be handed over to 156 Pro Coy.

ENTRY AND SEARCH OF PREMISES

7. The extant ROE do not specify the ability to enter and search public and private premises. The power to enter and search premises is permitted under the Law of Armed Conflict pursuant to the fundamental principles of Distinction, Proportionality and Military Necessity. Search proformas should be requested from 156 Pro Coy.

RMP POWERS

8. Once 156 Pro Coy are seized of a detainee they may arrest the individual.

ARREST

9. Upon arrest, the arrested person should be informed that he is under arrest and the grounds for the arrest unless it is impracticable in the circumstances to do so. In which case, the arrested person should be provided with the above information as soon as is practicable.

10. The arrested person shall be cautioned in the following manner:

“You are under arrest. You do not have to say anything, anything you do say may be given in evidence.”

11. The RMP officer who has made the arrest shall convey the arrested person to a police station/RMP CP as soon as practicable and a written custody record shall be commenced. The senior RMP officer present shall:

a. Order the arrested person to be searched in accordance with the ROE. Where practicable, servicewomen shall search female arrestees and children under the age of 14 years of age and servicemen shall search male arrestees.

b. Seize and record items of evidential value recovered from the arrested person.

c. Retain all items of personal property, other than clothing, from the arrested person. These items should be returned to the arrested person upon release. Details of any items seized shall be recorded in the custody record and countersigned by the arrested person if practicable.

d. Inform the arrested person's next-of-kin of his arrest and place of detention via the CMOC unless to do so is likely to hinder the administration of justice or adversely affect force security.

<sup>1</sup> Specified Arrestable Offence – see “Schedule of Specified Arrestable Offences”, Appendix 1 to Annex B.



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- e. Pass the arrested person's details to 1 (UK) Armd Div G2 and G2X.
- f. Obtain the arrested person's photograph and fingerprints.

12. After arrest and upon completion of the written custody record, an individual arrested on suspicion of the commission of a specified arrestable offence, or as a threat to force security, shall be transferred, via 13 Regt RLC, to the Theatre Internment Centre (TIC)<sup>2</sup> within 24 hours.

13. Upon referral of an arrested person to the TIC, a copy of all paperwork produced in respect of the arrested person is to be forwarded to Comd Legal, SO2 G1, HQ 1 (UK) Armd Div, J3 and SO2 Legal HQ 16 Air Asslt Bde.

NON-SPECIFIED OFFENCES

14. Although individuals arrested on suspicion of committing non-specified (minor) offences cannot be transferred to the TIC the procedure at paragraph 13 above should be completed for archive purposes. Should a minor offender become a persistent offender his conduct may amount to a threat to the Coalition mission. In such circumstances the individual can be referred to the TIC together with a written justification for the transfer. Advice on such action should be sought, in the first instance, from J3 and SO2 Legal HQ 16 Air Asslt Bde.

DETENTION AND INTERNMENT MANAGEMENT UNIT (DIMU)

15. It is proposed to establish a formal Detention and Internment Management Unit in due course. In the interim, the following procedure will be utilised to review detention and internment:

- a. Subsequent to an individual's referral to the TIC a paper review of the circumstances of the detention/internment will be conducted by GOC/COS within 28 days of the commencement of the incarceration.
- b. All paperwork and evidence collated in respect of the individual will be forwarded to GOC/COS together with legal advice from HQ 1 (UK) Armd Div Legal Branch. In addition, the detainee/internee will have access to separate legal advice independent of the chain of command.
- c. GOC/COS will determine whether or not to authorise the continued incarceration of the detainee/internee. A certificate of incarceration will be issued giving reasons for the continuance together with the period of time before the next review.
- d. If RMP inquiries are continuing into the circumstances of the detainee/internees' case all information obtained should be forwarded to the TIC, Comd Legal, SO2 G1 HQ 1 (UK) Armd Div, J3 and SO2 Legal HQ 16 Air Asslt Bde, for inclusion in the individual's file.

<sup>2</sup> Camp Freddy – the same location as the former Divisional Collection Point for EPWs.

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CONCLUSION

16. Any queries in respect of the above guidance should be directed to SO2 Legal HQ 16 Air Asslt Bde in the first instance.

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SPECIFIED ARRESTABLE OFFENCES

1. Murder;
2. Manslaughter;
3. Rape;
4. Indecent assault
5. Serious assault;
6. Kidnapping;
7. False imprisonment;
8. Riot;
9. Violent disorder;
10. Possession of explosives;
11. Possession of weapons (pistols, rifles, RPGs etc)<sup>3</sup>;
12. Smuggling;
13. Arson;
14. Serious criminal damage;
15. Armed robbery (gun etc or knife); and
16. High value or persistent theft (advice from HQ 16 Air Asslt Bde to be sought).
17. An attempt to commit any of the above.

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<sup>3</sup> A discretion exists as to whether to detain, depending upon the circumstances prevailing at the time of apprehension.

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COMMANDERS AIDE MEMOIRE  
OCCUPATION

INTRODUCTION

1. International Law says very little about the administration of occupied territory for the simple reason that it would be impossible to provide a blueprint for an infinite variety of situations. However, there is some guidance and the starting point is found in HC IV which states in Article 43 that:

the occupying power "shall take all measures ..... to restore and ensure, as far as possible, public law and safety, while respecting, unless absolutely prevented, the laws in force in the country".

2. "Public law and safety" is a translation from the French text "l'ordre et la vie publique" which is considerably wider than the translation "public law and safety". The deduction from this is that the obligations on the Occupying Power are potentially very wide ranging. By contrast, it should be noted that "the laws in force in the country" are to be respected ("unless absolutely prevented"). The Occupying Power must remember that, at the same time, it only acquires temporary authority and not sovereignty over the occupied territory. This balance between rights and obligations is paramount.

RIGHTS AND OBLIGATIONS

3. International Law does not provide a blueprint for occupation and the Occupying Power enjoys considerable freedom to choose the administrative structure it will adopt. Indeed, it must adopt an administrative structure that enables it to discharge its legal responsibilities. However, where there is no functioning administrative structure or a structure which is not capable of providing an adequate government, the Occupying Power is obviously entitled to create such new administrative bodies as are necessary. On the other hand, where there is a functioning administrative structure there is a legal presumption that the structure will be retained. Departures from the existing structure in these circumstances are only justified where they are necessary to meet the needs of the Armed Forces or the legal obligations of the Occupying Power. It is also likely that there is less need to replace this administrative authority the further down the administrative hierarchy one goes.

4. All administrations break themselves down into various departments such as health, law and order, courts, education, environment and so forth and these are replicated at each tier. International Law however does not break rights and obligations into neat categories but does tend to focus on a number of areas. To avoid repetition I have listed the rights and obligations of Government only once although they can apply to each separate tier of the administration.

5. Government (National/Local/Regional – including finance).

a. Rights.

Suspend constitutional guarantees (where necessary)  
Suspend government departments (where necessary)  
Right to seize state property (HC IV Article 53)  
Right to occupy Government Buildings (HC IV Article 53)  
Collect taxes to defray administration costs (HC IV Article 48)

Impose additional levies (HC IV Article 49)  
Requisition of private property (must be paid for and be proportionate) (HC IV Article 52)  
Requisition transport (owner entitled to compensation) (HC IV Article 54(2))  
Control media, communications and transport

b. Obligations.

Prevent economic collapse  
Prevent a breakdown of law and order  
Not to make permanent changes (eg imposition of democracy)  
Not to alter status of officials (GC IV Article 54)  
Restore public order and safety (*vis publicae*) (HC IV 43)

6. Medical.

a. Rights.

Requisition hospitals (only if temporary, in cases of urgent necessity and where provision has been made for civilians) (HC IV Article 57)  
Requisition material and stores (only if not necessary for civilians) (HC IV Article 57)

b. Obligations.

Ensure medical supplies (GC IV Article 53)  
Maintain medical services, public health and hygiene (GC IV Article 56)  
Facilitate relief schemes where medical supplies inadequate (GC IV Article 59)

7. Law and Order.

a. Rights.

Take measures for the protection of the Occupying Powers Armed Forces Interfacent (for reasons of security) (GC IV Article 78)

b. Obligations.

Restore public order and safety (HC IV Article 43)

Initial and six monthly review of internment (GC IV Article 78)  
Internees accommodated separately from PWs and common criminals (GC IV Article 84)  
Internment is to be of no lesser standard than PWs (GC IV Articles 83-185)

8. Legal System. Article 43 HC IV requires the Occupying Power to "respect the laws in force" in the occupied territory unless "absolutely prevented". Such laws may be repealed or suspended where they constitute a threat to the security of the force or an obstacle to the application of the Geneva Conventions.

a. Rights.

Promulgate laws (HC IV Article 65)  
Create new courts (where necessary) (HC IV Article 64)  
Remove judges (GC IV Article 54(2))

b. Obligations.

Laws to remain in force (unless a threat to security or an obstacle to obligations under International Law) (GC IV 64)  
New laws to be published in the local language (GC IV Article 65)  
Cannot alter the status of judges (HC IV Article 54(1))

9. Civilians

a. Rights.


Internment (GC IV Article 78)  
Compulsory labour (for people over 18 years of age and not part of the military operations) (GC IV Article 51)  
Evacuate (where imperative) (GC IV Article 49)

b. Obligations.

Family honour, rights and lives )  
Religion, manners and customs )  
No discrimination (including political) (HC IV Article 46 and GC IV Articles  
No violence, insults and public curiosity ) 8, 27, 33)  
No reprisals )  
Ensure food supplies (GC IV Article 55)  
Freedom of Worship (GC IV Article 58)  
Care and education of children (GC IV Article 50)

CONCLUSION

10. The principal Treaties concerning the Law of Occupation say very little about the administration of occupied territory. What little there is has been set out above for the guidance of commanders and others who will undoubtedly be unsure as to their rights and obligations when exercising authority in occupied territory. The Occupying Power has considerable latitude to change the structure and the personnel



of an administration but alongside this latitude are a set of legal obligations which are designed to ensure basic standards of humanity.

In sum, Occupying Power:

1. Has a duty to establish an effective administration in occupied territory.
2. No power to make permanent changes to the constitution or form of government of the occupied territory.
3. Where there is an existing administrative structure capable of functioning the Occupying Power should only make such changes as are necessary to meet its military objectives and legal obligations.

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

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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 apply 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.

N J Mercer  
Lt Col  
Comd Legal

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