



MOD-83-0000432-A

Card A is only Guidance which is based on Policy (the Policy falls within UK Law but actually is not as wide as the Law). Warning Shots are lawful but are controversial because of the risk of collateral damage. If an innocent bystander is killed or injured, the lawfulness of the action may not be established until after a lengthy investigation; however the principles are the same as every time one opens fire.

Warning shots can be used in the same scenarios as aimed shots at a target – where there is an honest belief in an imminent threat to human life and it is necessary to use force at that level. The decision must rest with the man on the ground at the time and he must take into account the likelihood of collateral damage at that place, at that time. Warning shots in a crowded street/traffic jam/near a school obviously carry a higher risk than in the country/on an empty highway etc. It is more or less a decision about the greatest good for the greatest number of people.

As mentioned above, it is very much a subjective decision for the individual marine so I would be cautious of having an SOP stating that in a set situation, warning shots will be used. The marine might interpret it as a blanket permission to use them in what might turn out to be inappropriate circumstances. I know what you are trying to do is to give the marine clear guidance and an umbrella; sadly it does not work like that - a dubious SOP will not relieve a soldier of responsibility for his actions because it is an SOP. ("I was only obeying orders" was not an effective defence at Nuremberg).

Despite my caveats, I am not opposed to having an SOP which provides that eg "warning shots may be used where necessary, after weighing the risk of collateral damage against the extent of the threat in the particular circumstances". Please let us see your draft proposal and we will be happy to offer more tangible advice.

Harry

H R B MYNORS
 Capt
 SO3 Legal HQ MND(SE)
 Red: 960 3114
 Blue: 960 3114

-----Original Message-----

From: Sparks Capt S GBR (INET)
Sent: 21 November 2004 12:21
To: Child Capt TCS GBR (INET)2; Mynors Capt HRB GBR (INET)
Cc: Lee Maj A GBR (INET); MND(SE)-DivHQ-DivRes2-Adjutant; MND(SE)-DivHQ-DivRes2-CO; MND(SE)-DivHQ-DivRes2-Ops Offr; Sparks Capt S GBR (INET); Newton Capt RW GBR (INET)
Subject: Card A ROE for 40 Cdo ranks attached to Baghdad Support Unit (BSU)

Tim, Harry,

SO37 here, using someone else's email, currently up at the BSU until 22 Nov and have a few points that need clearing up regarding ROE.

SITUATION

1. We have a detachment up here providing Force Protection to Maude House and convoy protection along Route IRISH. The en activity up here is far greater than in Basrah, for example approx 28 IED's / day alongside the 3 /

day in our AO. In order to move safely along IRISH, a more aggressive stance is required in order to deter VBIEDs. The RM ranks are working to Card A and carry this with them, they work alongside US ranks [REDACTED]

WARNING SHOTS

2. The issue which needs clearing up is the use of warning shots. In order to deter effectively, shouting at a driver along Route IRISH is not enough. The current de facto SOP's are that top cover sentries shout and use hand signals to keep traffic back. If a suspicious vehicle speeds up and moves too close, and does not back off, then a warning shot is fired into the deck. If the driver fails to take action then a shot is fired into the bonnet. If this fails, then the driver is engaged.

3. Bearing in mind the frequency of VBIEDs, the sentries are using this as self defence as they believe their life is in danger. They are used as a last resort, but must act with enough time so as not to cause unnecessary delay which could in turn endanger life. A verbal challenge alone has been proven to be ineffective so well aimed shots are deemed appropriate.

4. My concerns are that if an innocent civilian is accidentally wounded / killed by a warning shot then I can foresee difficulties with the subsequent investigation, as people will refer purely to Card A and may not take into account the local situation / SOP's.

RECOMMENDATION

5. A set of SOP's for the use of warning shots, as outlined in para 2, needs to be endorsed by Div legal for use in Baghdad, specifically in the area of Route IRISH.

I would be grateful for your initial thoughts on this. If happy, I will expand upon para 2 to produce a formal set of SOP's, but would appreciate your views on how Card A is to be used as a reference before I proceed. Also, as our tps as operating outside of MND(SE) AO, is there anything else I need to consider?

Will be back at AZP until 22:1800, but feel free to reply to this email until then (copied to my normal address).

Thanks,

SO37

Adjt 40 Cdo