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FRAGO 056 OP TELIC PHASE IV - NEW ANNEX R TO OPO 002/03
LAW, ORDER, DETENTION AND INTERNMENT

INTRODUCTION

1. This Annex identifies 4 key law and order functions and suggests how 1 (UK) Armd Div should perform these functions when acting as an Occupying Power in Phase III b and IV in the event of a complete or partial breakdown of the Iraqi criminal justice system in our AO. It replaces the direction given in OpO 002/03. The key law and order functions identified are:

- a. Stop and search.
- b. Entry, search and seizure.
- c. Arrest.
- d. Detention.

2. This annex also identifies a requirement for powers to intern civilians who have been arrested on suspicion of posing a threat to the security of our own or coalition forces.

GENERAL

3. The UK as an Occupying Power will be required, if necessary, to maintain public order and safety (Hague Convention IV Article 43). This task is likely to fall to 1 (UK) Armd Div in its Divisional AO.

4. Much will depend on the state of the law and order when the UK is able to exercise authority over Iraqi territory. If law and order can be maintained by the Iraqi authorities then much policing can be left to the appropriate indigenous authorities. However, if law and order has broken down or the Occupying Powers has partial or total responsibility for law and order, the Occupying Power will be required to stop and search, enter premises, seize articles, arrest individuals and detain them pending trial. These powers will be required both for force security and for public law and safety.

STOP AND SEARCH

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5. The power to stop and search members of the public is an essential weapon in the fight against crime and the maintenance of public law and safety. This power, if granted, should be exercised objectively and without discrimination.

6. Stop and search should not be conducted randomly, but should be conducted only when service personnel have reasonable grounds to suspect that the person to be stopped and searched has articles or substances in his possession, the possession of which constitutes an offence in law or poses a threat to force security. This power also extends to vehicles and should be limited to public places and places to which the public have access, or to land attached to private dwellings, or premises, to which the person to be searched has no right or permission to be on¹.

7. Articles or substances, the possession of which constitute an offence in law, or pose a threat to the security of the Coalition Forces include:

- a. Drugs;
- b. Firearms, explosives and ammunition;
- c. Stolen goods; and
- d. Articles for use in the pursuit of crime.

8. Wherever practicable, before being searched the person should be informed of:

- a. the object of the search,
- b. the grounds for the search,
- c. his entitlement to a copy of a search record and where this may be obtained.

9. It is important that all searches are properly recorded. The person making the search should make a record of the search at the time or as soon as practicable afterwards, which should include the following:

- a. Date, time and place of search.
- b. Details of the person and/or vehicle searched.
- c. Object of the search.
- d. Grounds for the search.
- e. Objects found.

¹ NB - Stop and search powers not intended for inside private property, see paragraph 13 - 17

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- f. Arrest made (Yes/No).
 - g. Injury/Damage caused (Yes/No).
10. Reasonable force may be used to effect the search. Depending on the nature of the objects found, a positive search may lead to an arrest (paragraph 19 refers).
11. If this power is executed in a public place² then the person searched may be required to remove no more than an outer coat, jacket and gloves.
12. Male personnel are not to physically search females or children under the age of 14 unless an immediate search is imperative for reasons of force security, in which case, authority should be obtained from an officer of at least field rank.

ENTRY, SEARCH AND SEIZURE

13. Powers to enter and search premises, and to seize property from those premises will also be a useful tool in the Coalition Forces efforts to ensure force security and to maintain public order and safety. Where practicable such searches should be conducted or supervised by service police personnel.
14. Pre-planned search – by warrant. If on an application by an appropriate officer³ a BG Comdr is satisfied that there are reasonable grounds⁴ for believing there is material on the premises specified in the application which is likely to be of value to the investigation of:
- a. a threat to force security; or
 - b. an arrestable offence⁵; and
 - c. the recovery of material likely to be relevant evidence.

he may grant written authority to enter and search the premises and to seize and retain anything for which the search was authorised.

15. Such a warrant will be valid for 28 days or some lesser period as specified in the warrant (Performa Warrant attached at Annex A).
16. Unplanned searches – upon arrest. Immediately after arrest for a serious arrestable offence⁶ or for posing a threat to force security, Provost personnel shall have the power to enter and search any premises⁷ without a warrant if they reasonably

² See footnote 1 above.

³ Appropriate Officer – means an officer in command of at least field rank.

⁴ Reasonable grounds – Objectively justifiable reasons supported by evidence and/or information/intelligence.

⁵ Arrestable offence – as proscribed by Schedule 1 'Arrestable Offences'.

⁶ Serious Arrestable Offence – as proscribed by Schedule 2 'Serious Arrestable Offence'.

⁷ Eg, if the commission of an offence is witnessed from outside the premises or the person to be arrested has entered immediately after the witnessed commission of the offence.

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believe that such a course of action is absolutely necessary to secure evidence in relation to the offence or for the purposes of force security.

17. Personnel may seize and retain anything for which they may search under this provision. Verbal authority for such a search should be obtained from a Provost officer of at least field rank before conducting the search. However, the search may be conducted without such prior authority if the arrested person has not yet been taken to a police station and if absolutely necessary for the investigation of the offence or to mitigate the threat to security.

18. Record of Search. A comprehensive record of the search must be made including, but not necessarily limited to:

- a. Identity of individual;
- b. Date, time group of search;
- c. Location of the search, including grid reference; and
- d. an inventory of all articles and objects seized.

ARREST

19. If 1 (UK) Armd Div is to maintain law and order then powers of arrest are essential. Powers of arrest should only be used when necessary. Personnel are encouraged to exercise discretion wherever possible.

20. Arrest without warrant. A member of the Coalition Forces deployed in Iraq may arrest any member of the local population whom he has reasonable grounds for suspecting is about to commit, is committing or has committed an arrestable offence, or who poses a threat to the security of the coalition.

21. A list of arrestable offences is contained in Schedule 1 'Arrestable Offences'.

22. Arrest by warrant. If a BG Comdr is satisfied, on application by an appropriate officer or otherwise, that there are reasonable grounds for believing:

- a. that a person presents a threat to force security, or
- b. that a person has committed an arrestable offence

the BG Comdr may issue a warrant to arrest that person. (If it is considered necessary to conduct a search, the provisions at paragraph 14 are to be followed.)

23. Such a warrant will be valid for 28 days or some lesser period as specified in the warrant (Performa Warrant attached at Annex B).

24. Actions on arrest. On arrest, the arrested person should be informed that he is under arrest and the ground for the arrest. If this information cannot be given at the

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time, then it must be given as soon as practicable after the arrest. The person should be given the following caution:

"You are under arrest, you do not have to say anything, but anything you do say will be written down and may be given in evidence."

25. Search of the person after arrest. Personnel may search an arrested person if there are reasonable grounds for believing that the arrested person may be in possession of:

- a. evidence relating to an offence; or
- b. information connected to the threat to security
- c. articles or items that could be used to pose a danger to himself or others; or
- d. articles or items that maybe used to assist an escape.

26. Release from arrest. An arrested person may be released from arrest if the grounds for arrest no longer exist or if detention is not in the interest of justice.

27. As soon as practicable after the arrest, the arrested person should be transferred to the jurisdiction of the local police or handed over to the Service Police.

POLICE CUSTODY

28. A person should be deprived of his liberty for no longer than is necessary and detention should not be arbitrary.

29. Actions on arrival at a UK service police station. The arrested person shall be brought before a service police custody officer as soon as practicable after arrest. The service police NCO/senior rate appointed to the duty of custody officer should be of at least the rank of substantive Sergeant or equivalent.

30. Upon arrival at the police station, or as soon as practicable thereafter, the serviceman making the arrest shall relay the circumstances of the arrest to the custody officer and this information should be recorded in the custody record. If practicable, this should be done in the presence of the arrested person and an interpreter.

31. When the arrested person is brought before the custody officer, the custody officer shall begin a written custody record in relation to that person. As soon as practicable after the arrival of the arrested person at the service police station the custody officer shall:

- a. Order a search of the arrested person. Where practicable, servicewomen should search female detainees and servicemen should search male detainees.

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- b. Seize and record items of an 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 should be recorded in the custody record and countersigned by the arrested person if practicable.
 - d. Inform the arrested person's NOK of his arrest and place of detention via CMOC unless to do so is likely to hinder the administration of justice or adversely affect force security.
 - e. Pass the arrested person's details to 1 (UK) Armd Div G2 and G2X.
 - f. Obtain the arrested person's photographs and fingerprints
32. Unless the arrested person has been arrested as a threat to force security, the custody officer shall then determine whether or not there is sufficient evidence to charge the arrested person with the offence for which he was arrested. If the custody officer determines that there is insufficient evidence to charge the accused or no realistic prospect of obtaining that evidence, the custody officer shall release the arrested person as soon as reasonably practicable. If the custody officer determines that he has sufficient evidence then the arrested person should be charged accordingly (see paragraph 35 below)
33. If the custody officer however determines that he does not have sufficient evidence to charge the person arrested in relation to an offence, he may continue to detain the person for up to 48 hours if he has reasonable grounds for believing that detention without charge is necessary to:
- a. secure and preserve evidence relating to an offence for which he is under arrest; and/or
 - b. to obtain such evidence by questioning.
34. If the custody officer has reasonable grounds for believing that pre-charge custody is necessary he shall record the grounds for the detention on the custody record.
35. Charge. Once the custody officer determines that he has sufficient evidence to charge the person arrested with the offence for which he was arrested, the custody officer shall:
- a. charge the arrested person, or
 - b. formally caution and release the arrested person.
36. Any decision by the custody officer to release an arrested person must be approved by a service police officer of at least field rank.

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37. Post-charge custody. Where a person is charged with an offence, the custody officer shall order his release from police detention except

- a. Where the person is suspected of posing a threat to force security
- b. Where the offence is a serious arrestable offence

38. Detention time limits. The custody officer may authorise detention for an initial period of up to 24 hours from the time of arrest. Reviews thereafter shall be carried out periodically by a Provost officer of at least field rank. The first review shall take place no later than 24 hours after the time of arrest, with each subsequent review taking place no later than 12 hours after the previous review up to a maximum of 48 hours. At the conclusion of the 48 hour period the arrested person must be transferred to the Detention and Internment Management Unit (DIMU) immediately. In the case of a person arrested as a threat to force security such person shall be transferred to the DIMU no later than 24 hours after arrest.

INTERNMENT

39. If a person is arrested on the grounds of posing a threat to force security and subsequently detained they are classified as an internee under International Law.

40. On arrest for posing a threat to Force Security, an immediate signal should be sent to G3 Ops HQ 1 (UK) Armd Div through the chain of command. The signal should include the following information:

- a. Personal details of individual;
- b. Grounds for suspecting that the person is a threat to the security of the Coalition forces
- c. Location of the individual; and
- d. Any other information that will assist in the determination of whether to issue an Internment Certificate.

41. As soon as practicable after detention, the detainee should be handed over to the Service Police or conveyed to a UK service police station. As soon as practicable, and within 24 hours, the arrested person shall be transferred to the DIMU.

DETENTION AND INTERNMENT MANAGEMENT UNIT (DIMU)

42. The DIMU is designed to receive both detainees and internees (referred to collectively as detainees). The responsibility for a detainee will be transferred to the DIMU no later than 48 hours (24 hours in respect of an internee) after arrest. On transfer of responsibility, a Prosecuting officer and Defending officer are to be nominated by the DIMU and the Prosecuting officer is to ensure that the detainee and

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his designated Defending officer have been informed of the reasons for the continued restriction of liberty.

48. Classes of Detainee. Persons shall only be held as detainees at the DIMU where they fall into one or more of the following classes:

- a. A person reasonably suspected of committing a serious arrestable offence (detainee)
- b. A person committed for trial in connection with the alleged commission of a serious arrestable offence (detainee)
- c. A person detained as a threat to force security (internee)
- d. A person detained as a voluntary detainee (internee)

49. Powers of GOC 1 (UK) Armd Div. Within 96 hours of arrest, GOC 1 (UK) Armd Div has the power to order the release of the detainee if it becomes apparent that there would be insufficient evidence or military purpose to hold the detainee.

50. At the expiry of 96 hours, the Prosecutor will notify the Reviewing Authority if a detainee continues to be held on suspicion of having committed an offence. The Reviewing Authority will receive a written brief from the Prosecutor outlining details of the alleged offence and the evidence against the detainees.

51. Within 24 hours of the decision by GOC 1 (UK) Armd Div, the Prosecutor will inform the detainee and the Defending Officer of the reasons for the continued detention. On receipt of the reasons for the detention, the Defending Officer will be permitted to make written submissions to the Reviewing Authority who will then be permitted to:

- a. order that a detainee be released with or without conditions;
- b. order that a detainee be held in detention pending trial by a competent court or other tribunal; or
- c. order that a detainee be held in detention pending trial by a competent court or other tribunal or for a fixed period of time, whichever ever would occur first.

52. Based on the written material provided by the Prosecutor and the Defending Officer, the Reviewing Authority, before he makes a decision, has to be satisfied that:

- a. there is a reliable and consistent body of material that tends to show that the detainee could have committed a serious arrestable offence, and
- b. assess whether the continued detention is necessary to prevent a threat to force security, the escape of the suspect, injury or intimidation of a victim or witness or destruction of evidence, or to be otherwise necessary for the conduct of the investigation.

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