
To: NZL_HQJFNZ_J09

Thanks ^{PSR(IC)3} I'm happy with this. Pse proceed.

From: JFNZ.J09
Sent: Monday, 12 April 2010 5:39 p.m.
To: JFNZ.COMJFNZ
Subject: ROEREQ 3 Protection of Property

Sir,
The draft response for Comd TF 81 in respect of their ROEREQ 3 follows for your perusal. If you are satisfied with it, I can send it on your behalf.

PSR(IC)3

J09
DTel ^{PSR(IC)3}
Phone ^{PSR(IC)3}
Mobile ^{PSR(IC)3}

SECRET

JFNZ 01455/ROE

References: A. OP WĀTEA ROEREQ 3 03130/LEGAL dated 19 Jan 10
B. OP WĀTEA 03130/LEGAL dated 23 Jan 10
C. Email LSO OP WĀTEA - J09 29 Jan 10

1. Ref A, OP WĀTEA ROEREQ 3, is declined. The reasons for that decision are as follows.
2. The extant ROE **B** permits minimum force, up to and including deadly force, to be used to protect designated property. The extant ROE **C** also allows minimum force, up to and including deadly force, to be used to achieve the mission.
3. The extant ROE defines designated property to mean property (including areas) designated by:
 - a) COMISAF, or COMISAF SOF, and approved by COMJFNZ, or
 - b) COMJFNZ in respect of a national task.
4. As drafted, those provisions provide an appropriate degree of NZ control over what property may be designated, and thus defended with up to deadly force, in that as COMJFNZ I can approve designation in respect of two classes of property, namely:
 - a. property already designated, by either
 - (1) COMISAF, or
 - (2) COMISAF SOF; and
 - b. property in respect of national tasks.

As my authority to designate property of my own initiative is limited to property relating to a national task, the NZ rules contribute to there being a level of consistency across coalition partners in respect of designated property, given the level in theatre at which property can be designated, and allowing for an exception only when the task requiring designation is a national one.

5. Refs A and C outlined that PSR(S)1, PSR(IC)4

That ^{PSR(S)1} caveat reduces the capability to defend property to effectively the level of self-defence, which is currently provided for in NZ ROE **A**

6. Given that PSR(S)1, and as you know, no requirement for me to designate property for a national task has arisen, ROE **B** has not yet been employed. However, the current ROE **C** allows for, as noted above, the use of minimum force, up to and including deadly force, to achieve the mission.

7. Under ROE **C** if there was a threat to equipment which was essential to the completion of the mission, the required minimum level of force to protect the equipment to enable the mission to succeed is currently authorised. The point which would need to be considered is whether in the context of the mission the force employed in protection of the equipment was necessary to achieve that mission.

8. That approach is similar to the approach taken under domestic law to self defence, where the threat is that understood to exist by the person using force in self defence (who could in fact be mistaken about the actual threat that existed), and the level of force is then objectively analysed, from that starting point, as to its reasonableness. In one sense that is a better approach to take to the use of force, in that the force to be used is tailored to the particular circumstances, than a designation process; which could possibly lead to the use of force as a standardised response to protect a designated item, which in the circumstances at the time was not actually mission critical and where the force could objectively be seen to be excessive in that situation.

P. J. STOCKWELL
AVM
COMJFNZ