

**LOAC, COMMAND DIRECTIVES, ROE AND RELEVANT AUTHORITIES**

1. The units using force during Operation SAYAQA belonged to both ISAF and OEF.

2. **ISAF units.**

a. A preliminary statement is made regarding possible application of the Laws of Armed Conflict (LOAC). Within ISAF, no common understanding exists as to the exact legal characterization of the current conflict in AFG. However, it is clear to all that this conflict is not an "International Armed Conflict" since there is no armed conflict between two or more High Contracting Parties to the Geneva Conventions. Whether or not a "Non-International conflict" exists remains unresolved; the ISAF participating nations each have differing opinions on that question. This report in no way intends to answer the question on the nature of the (armed) conflict in AFG. Without prejudice to the positions of the participating nations, it is assumed that the participating nations to the ISAF, as a policy, will act in accordance with Common Article Three (3) of the Geneva Conventions and Customary International Law that is connected to that body of law. Furthermore, the ISAF Operation is a Chapter VII Peace Enforcement Operation based on the relevant United Nations Security Resolutions, to include UNSCR 1386, 2001, and the most recent one (being resolution 2011) extending the mandate of the ISAF mission to 13 October 2012. It provides ISAF with all the necessary means to fulfill the mandate.

b. Under NATO Regulations, ROE are the authorizations for, or limitations on, the use of force during military operations. The ROE that apply to the ISAF operation are stated in the ROE implementation message 001 as attached to the JFCBS OPLAN 30302. Under ROE there is an inherent right of self-defense: Self-defense trumps ROE. Self-defense must be applied in accordance with National Laws of the particular nation applying that force. The use of force under ROE is constrained by LOAC and the mandate as provided by the UNSCR. Commanders can further restrict the use of force authorized by ROE and can issue guidance (such as tactical directives) with respect to the application of force. In conclusion, each level of command in ISAF has developed standard operating procedures (SOPs) describing process on a particular area. These SOP's apply, depending on the nature of the SOP, to the own level of command only, or also to subordinate levels. In the below paragraph, adherence to (i) LOAC, UN Mandate, ROE and self defense, (ii) tactical directives and (iii) SOP's by ISAF forces is assessed:

(1) **LOAC, UN Mandate, ROE and Self-Defense.** ISAF forces that used force during Operation SAYAQA were the Apache helicopters (AH 64s) belonging to Task Force Saber, which is a U.S. unit, that supported ground forces within the ISAF mandate. However, US self-defense rules override ISAF ROE for Hostile Intent and Hostile Acts. Positive Identification of the hostile individuals was obtained prior to each engagement. At the time of the engagements there were no indications that Pakistani Military were involved after which the engagements

followed. The engagements of AH 64 helicopters during this operation were all captured by U.S. self-defense, that trump (ISAF) ROE.

(2) **Tactical directives.** The relevant tactical directives for this operation are COMISAF Tactical Directive, rev 4, dated 5 November 2011 and the COMISAF Night Operations Tactical Directive, Rev 2, dated 5 November 2011. Both directives aim at protecting the interests of civilians and, of paramount importance in a COIN Campaign, the avoidance of casualties amongst the civilian population. During the engagements there was no indication of civilians present on the ridgeline nor have there been any reports as to civilian casualties afterwards. No one other than Pakistani military became casualties.

c. **SOPs.** ISAF forces complied with the relevant SOP's for the authorization of use of force. Since TF Saber had a supporting role to the OEF unit ODA 3313, the organization of and the approval of the operation and the C2 over the unit was conducted under and by OEF procedures. Therefore, these procedures will be elaborated on in the below paragraph.

3. **OEF ROE.** OEF and ISAF are different missions. OEF is targeted both at eliminating remnants of the Taliban and Al-Qaida and at building the conditions for a stable Afghanistan, while ISAF is primarily designed to provide basic security, enabling Non-Governmental Organizations to perform their work and the GIRoA to deepen its hold on the country. The operational and political goals of the OEF and ISAF missions result in differing ROE.

4. **U.S. ROE.** [This SECRET paragraph deleted, FOIA (b)(1)]

5. **U.S. ROE.** In response to a hostile act or demonstrated hostile intent, commanders have the inherent right and obligation to use all necessary means available to take all appropriate action in self-defense of their units and other U.S. / designated forces, persons, property, and to achieve mission accomplishment. The use of force in self-defense may exceed the means and intensity of the hostile act or hostile intent, but the nature, duration and scope of the force used should not exceed that required. A hostile act is an attack or other use of force against the U.S., U.S. Forces, or other designated persons / property. It also includes force used directly to preclude or impede the mission and/or duties of U.S. Forces. Hostile intent is the threat of imminent use of force against the U.S., U.S. Forces, or other designated persons or property, to include the threat of force to prevent or impede the mission or duties of U.S. Forces.

6. Under OEF ROE, "imminent" is based on an assessment of all the facts and circumstances known to U.S. Forces at the time and may be made at any level. Imminent does not necessarily mean immediate or instantaneous. As a reminder, ISAF's definition of "imminent" is different and more restrictive than under U.S. self-defense policy.

7. **OEF – Tactical Directives.** The relevant tactical directives are COMISAF/CDR USFOR-A Directive, rev 4, dated 5 November 2011 and the COMISAF/CDR USFOR-A Night Operations Tactical Directive, Rev 2, dated 5 November 2011. Both directives aim at protecting the interests of Afghan civilians and the avoidance of casualties among the Afghan civilian

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population. During the engagements on 25-26 November 2011, there was no indication of civilians present on the ridgeline nor were there any later reports of civilian casualties.

8. **OEF SOPs.** U.S. Forces complied with the relevant SOP's for the authorization of use of force. The Commander, SOTF-E was verbally designated with the authority to authorize air to surface fires.

9. The CONOP procedure was complied with. All information that had to be included was included. The CONOP was briefed to RC-E DCOM MG Volesky and subsequently to IJC DCOS JOPS MajGen Laster. Both general officers expressed concerns as to the location of the HLZ relative to the Pakistan border and the Fire Control Measures regarding the border(posts). The location of the known possible Borderposts were to be included in the CONOP. After amendment, the CONOP was approved on 23 November. MajGen Laster, had his signature block changed, due to advice of his legal advisor, informing that the operation was to be regarded an OEF operation. Technically the change was not possible.

10. Any pre-planned targeting procedures were not applied, since the COPOP did not provide for pre-planned targeting. Any issues regarding CDE did not occur due to the composition of the terrain that was eventually engaged. There were no civilian structures present.