

[REDACTED]

**REPORT OF AN INQUIRY OFFICER INTO THE
SHOOTING OF TWO AFGHAN NATIONAL POLICEMEN, 11 AUGUST 2009**

References:

- A. A/CJOPS, Instrument of Appointment of Inquiry Officer dated 26 Aug 09
- B. Terms of Reference (TOR) dated 26 Aug 09
- C. ADFP 6.1.4 - *Administrative Inquiries Manual* of Jun 06
- D. CDF [REDACTED] (ROEAUTH – Op SLIPPER ROE Serial [REDACTED]) of 13 Jan 09

INTRODUCTION

Appointment and Terms of Reference

1. I, [REDACTED] having been duly appointed by A/CJOPS AVM G. Evans to inquire into and report upon the circumstances of the shooting of two Afghan National Policemen (ANP) on 11 Aug 09 by members of the 2nd Mentoring and Reconstruction Task Force (2 MRTF), in accordance with the TOR attached to the instrument, herein submit my report.

Conduct of the Inquiry

2. After my appointment, I met with HQ JOC Legal Branch staff and I completed the statement of independence. I arrived in the MEAO on 3 Sep 09 and in Tarin Kowt, Afghanistan on 7 Sep 09 after a delay caused by aircraft unserviceability. I received documents relevant to the inquiry from HQJOC, HQ JTF 633, MRTF-2 staff and other ADF and non-ADF witnesses and I identified relevant documents from Defence websites and the documents are annexed to this report, as the TOR require (annexes A to HH and III to SSS). I received one piece of guidance on the conduct of interviews from HQJOC Legal staff and I put a question about the conduct of the inquiry to HQ JOC staff and the guidance, question and answer are annexed to this report (annexes C and D).

3. In obtaining evidence from witnesses, I generally spoke briefly with them before beginning my formal interviews and I also received briefings from staff who did not give evidence in the inquiry, to inform myself more fully of the context of the incident. These briefings were consistent with the evidence obtained from witnesses. Because the witnesses were actively involved in operations, there were occasional interruptions in the interviews, and some of these are not explained in the recorded parts. There was no discussion of the evidence or any other irregularity in these breaks. Where witnesses had made written statements about the incident before I cautioned them as part of the interview, as required by Annex C, I gave them an opportunity to reconsider their statements and each wished me to receive the statements. Each witness was given the chance to propose corrections or make additions to the record of their interview and where witnesses submitted proposed corrections or additions they are noted on or attached to the transcripts. Each witness who was interviewed confirmed his or her evidence by signature or email, some emails coming from the witnesses but, because they

[REDACTED]

[REDACTED]

2

did not have their own [REDACTED] accounts and because of the classification of the transcripts, through the [REDACTED] accounts of other members.

4. On 7 Sep 09, between 1358 h and 1445 h, just after the time of day of the incident, I was able to visit the incident site and conduct a limited re-enactment of the event with members of the callsign who were involved in the incident, and slightly later to see the firing of a pen flare. My observations of this walk-through and demonstration are recorded in this report. Apart from the effect of road works to which I will refer, the graphic evidence (annexes RRR to TTT) is consistent with my own observations and I consider that my observations greatly assisted me in making my findings.

5. The evidence of witnesses, the documents I received and the [REDACTED] required to determine the location of the wounded ANP officer suggested it would not be appropriate to try to interview him or other local witnesses and I did not attempt to do so. Because the TOR focus the inquiry on military doctrine, training, procedure and members' conduct in the course of their duties and because I received other accounts of the reactions of other local nationals, I consider that not interviewing these people has not prevented me from properly inquiring into the matters in the TOR.

6. The TOR required me to consider the relevant practices of other armed forces and a number of non-ADF personnel agreed to speak to me about this subject in person or by telephone. These discussions were recorded only in notes which I have reduced to annexes to this report (DDD to FFF). As the notes indicate, in some of these discussions, the Inquiry Assistant and another witness in the inquiry, who had arranged the meetings through his working relationships with them, were also present.

7. I did not consider that the evidence suggested adverse findings against any person involved in the incident and so I did not issue any notices of proposed adverse findings.

8. Observations about following matters which were not, in my opinion, within the TOR also emerged during the inquiry and, accordingly, I simply indicate that some evidence relating to them appears in the annexes:

- a. Description of the incident as a VCP incident;
- b. Attitude of the local nationals following the incident;
- c. Shooting with [REDACTED];
- d. Post-incident support to members involved;
- e. [REDACTED]¹; and

¹ [REDACTED]

[REDACTED]

[REDACTED]

3

- f. Compliance with ROE.

Nomenclature

9. While the term VCP is widely used throughout the inquiry report it may not always be doctrinally correct. Any instance where vehicles have to be controlled, be it for the establishment of a security cordon at an incident site, perimeter security during a halt when conducting mounted operations or for deliberate or snap VCPs are referred to as a VCP for ease of reference. Thus the tactical utility of VCPs should not be inferred from this report.

FINDINGS

10. The organisation of the report does not strictly follow the TOR as I felt that addressing factual findings followed by the assessments dictated by the TOR would set the report out more logically while still addressing the TOR as given to me. Given the relevance of some issues to the incident some areas are addressed broadly while others are more narrowly dealt with. This approach accords with the answer from HQJOC DLEGAL to my concern about this aspect (Annex D).

Details of Incident

11. On 11 Aug 09, Combat Team [REDACTED] (CT-[REDACTED]) was deployed on [REDACTED]. The mission was to [REDACTED] as part of the operation in order to provide a secure environment in the lead up to the national elections. As part of the operation [REDACTED] Platoon (C/S [REDACTED]) was deployed to Patrol Base (PB) [REDACTED]. On the morning of 11 Aug 09 an Afghan National Police (ANP) officer presented at PB [REDACTED] with what he claimed were parts from a rocket. The Pl Comd [REDACTED] then formulated a quick plan to investigate the Point of Origin (POO) and had the plan cleared (with minor modifications) by [REDACTED].

12. The [REDACTED] approximately [REDACTED]m east of [REDACTED] and conducted a [REDACTED] patrol to the POO site. On further investigation by the attached [REDACTED] section it was not certain whether the explosion had been caused by a rocket or had in fact been an IED. In order to further examine the site and to control entry along the nearby road to ensure that an appropriate safety distance from the site was maintained, [REDACTED] control points were established along the road to the NE and SW of the suspected POO site.

13. After the establishment of the cordon, three cars had separately approached from the NE and obeyed visual signals to stop before being allowed to pass through the VCP. At approximately 1315 D/E a motorcycle then approached from the NE and [REDACTED] gave a visual signal to stop when the motorcycle was approximately [REDACTED] from his position. When the motorcycle continued to approach, [REDACTED] shouted out an order to stop in Pashtu and raised his weapon.

[REDACTED]

[REDACTED]

4

[REDACTED] then joined him [REDACTED] and they both continued to shout warnings.

14. Physical and verbal warnings continued until the motorbike was approximately [REDACTED] from the position when [REDACTED] fired one round at the [REDACTED] and then at the [REDACTED]. [REDACTED] fired two x 3 round bursts from the [REDACTED] at the [REDACTED], and [REDACTED] fired two x 3 round bursts at the [REDACTED] followed by two rounds at the [REDACTED]. The motorbike fell to the side of the road along with the driver and passenger approximately [REDACTED] from [REDACTED] position.

15. After securing the area, [REDACTED] (a [REDACTED]) assessed the casualties. The driver was dead and the pillion passenger was wounded. The pillion passenger was wearing a blue shirt and had a rifle slung over his back. The driver was prepared IAW local customs by the interpreter – he was later removed by persons unknown and buried. The passenger was provided with first aid and evacuated to FOB Ripley by AME, assisted by ANA personnel who had by this time arrived at the scene. He was later transferred to the ANA hospital in Kandahar. The callsign withdrew to PB [REDACTED] after the incident. Approximately 5-10 minutes after the shooting, two vehicles pulled up to the south of the VCP and fired at the position. They were subsequently engaged by the [REDACTED] section and withdrew. This action is mentioned for completeness' sake, is covered in the QA but is not part of my terms of reference and will not be discussed further.

16. It should also be noted that prior to the conduct of the operation the potential for [REDACTED] in the AO had been briefed to the platoon by the MRTF [REDACTED] staff (Annex XX), and was understood by the platoon members (Annex NN).

Observations of the Incident Site

17. The Inquiry Officer and Assistant visited the incident site along with the platoon personnel who were involved in the incident and walked through the stages described above. Since the time of the incident the road has been widened, and the trees visible in the photographs (Annex RRR) have been removed as a result. While the position was well sited astride [REDACTED], it was still difficult on foot to make out the VCP member at [REDACTED] and virtually impossible to hear the verbal warning. It would not be surprising if a motorcycle rider had not seen the signal to halt or heard the request to stop. It was not until [REDACTED] that the soldier was clearly visible to someone looking in his direction. A pen flare fired at the request of the Inquiry Officer was clearly visible and audible in approximately the same conditions as on the day.

Identity of the Australian and Afghan Personnel Involved

18. Those involved in the incident were [REDACTED] and [REDACTED]. The ANP officer killed was [REDACTED] and the injured officer was [REDACTED].

[REDACTED]

[REDACTED]

5

Other Australian personnel involved in the lead-up to the incident include the CO, RSM, Legal Officer, OC and CSM CT-[REDACTED], and other platoon staff.

Applicable Orders, Instructions and Operating Processes for VCPs

19. Because of the MRTF command statuses under CJOPS and COM ISAF, it sits under two hierarchies of potentially applicable orders, instructions and operating processes in relation to the establishment and conduct of VCPs (and most other operational matters). The Australian orders which apply to MRTF include, most relevantly, the ROE (reference D, with the authority of CDF), the OPORD (annex F, with the authority of CJOPS) and the CJTF directive on [REDACTED] (annex G). The ISAF orders which apply most directly are ISAF SOP [REDACTED] and the COM ISAF [REDACTED] Directive (annexes I and J, both applying with the authority of COM ISAF) and [REDACTED] SOPs (annexes O and P). The COM ISAF [REDACTED] was also specifically applied through directives issued by CJTF and CO MRTF-2 (annexes K and L).

20. The main issue of interest in this inquiry relates not to the utility or establishment of VCPs (which the soldiers appear well practised in despite the lack of written procedures for it) nor to the applicable ROE which authorise the soldiers to use lethal force, but to the EOF procedures conducted by the soldiers leading up to the use of lethal force.

21. ISAF SOP [REDACTED] was written in order to establish theatre-wide standards for force escalation procedures (including VCP layout and convoy warning signs). Originally issued [REDACTED] and last amended [REDACTED], ISAF SOP [REDACTED] outlines the [REDACTED] force escalation process to be followed. The following points are relevant:

- a. As part of Step [REDACTED] the SOP ‘**..mandates the use of pan, mini or signal flares [REDACTED].**’
- b. Paragraph [REDACTED] directs that all procedures ‘**..[REDACTED].**’
- c. The conclusion reiterates the point that ‘**[REDACTED].**’

22. Paragraph [REDACTED] of the COM ISAF [REDACTED] Directive, dealing with escalation of force, directs ‘**..[REDACTED].**’ It should be noted that the [REDACTED] Directive references an out-of-date version of SOP [REDACTED] which had been updated twice before the issue of the Directive.

23. [REDACTED] has on-line SOPs but none which specifically deal with EOF or pass on the mandated requirement of ISAF SOP [REDACTED]. The ROE SOP has the

[REDACTED]

[REDACTED]

6

COM ISAF Directive as a reference but does not refer to it as a guide for EOF procedures.

24. In relation to unit-level instructions, at the time of the incident there were no MRTF-2 written instructions formally outlining the siting, establishment and conduct of VCPs. This aspect of VCPs was considered a basic and well-practised skill and was not captured in written doctrine. CT-[REDACTED] had a set of VCP SOPs that were a mix of MRTF-1 and RTF-4 (the notes refer to RTF throughout). They do not comply with the equipment requirements or mention the escalation of force (EOF) procedures of ISAF SOP [REDACTED]. Versions of previous RTF/MRTF SOPs and TTPs confirm that previous rotations also either did not have any written procedures or, if they did, did not include all the requirements of ISAF SOP [REDACTED] as mandatory.

Training Provided to Those Involved Australian Personnel in Those Orders, Instructions and Operating Processes.

Instructions Provided to Australian Personnel

25. Individual soldiers had been issued, trained on and understood their ROE. They advised that they used lethal force IAW their [REDACTED]. If the direction of ISAF SOP [REDACTED] had been met they should also have been issued with soldiers' cards outlining the [REDACTED] EOF procedures. There is evidence (Annex CCC) that RTF-1 had been issued such a card, although it was a more basic version and was affixed to the inside of the [REDACTED] for [REDACTED] reference. No cards were directed to be produced prior to deployment. It appears that knowledge of the SOP and the soldiers cards was lost over successive deployments.

26. The only person interviewed within the BG who knew of the existence of SOP [REDACTED] before the incident was the Legal Officer and the version which he received had been superseded before he arrived in theatre (annex ZZ). He believes that he received it from the previous MRTF Legal Officer amongst a number of documents he had been given once he was warned for deployment and made contact with the MRTF-1 Legal Officer. His attention was never drawn to the document specifically or its provisions regarding EOF. He received no formal briefings or training in Australia on Afghanistan-specific legal issues during the force preparation process.

27. While the command elements interviewed advised that they had read the ISAF [REDACTED] Directive that refers to SOP [REDACTED] no one had read the actual SOP. Similarly, CJTF 633's minute on the COM ISAF [REDACTED] Directive requests a backbrief on how each TG/TU would modify their CONOPS and TTPs to take into account the [REDACTED] Directive, although the minute did not include SOP [REDACTED] as a reference or refer to it in the body. At that time HQ JTF633 did not have direct access to a NATO '[REDACTED]' terminal on which NATO SOP are available electronically. On 4 Jul 09 the CO sent a two-page summary of the ISAF Directive that required all commanders to brief their soldiers on the Directive. The

[REDACTED]

[REDACTED]

7

summary did not include the reference to SOP [REDACTED] contained in the body of the COM ISAF [REDACTED] Directive.

28. In response to a HQJOC Request for Information (RFI) asking whether the graduated responses for EOF used by JTF633 were appropriate, the HQ JTF633 reply makes no mention of the requirements set out in SOP [REDACTED] (and hence the COM ISAF [REDACTED] Directive) but notes that ‘..the need to have [REDACTED] options, such as pen flare ...has been identified.’ without mentioning that their use is mandatory for ISAF forces or the need for EOF soldiers’ cards. These examples all show the widespread lack of awareness that ISAF had mandated certain EOF procedures within SOP [REDACTED].

29. The CO advised that although he was not aware of SOP [REDACTED] mandatory requirement regarding the use of pen flares, he had been concerned that such flares were being used unnecessarily when in built-up areas such as Tarin Kowt to warn [REDACTED]. On 3 Jul 09 he issued a supplementary order to MRTF-2 regarding the use of [REDACTED] force directing that ‘Pen flares ...are only to be used as a serious escalation of force measure prior to the potential use of lethal force in response to an [REDACTED].’

30. CO CTC advised that he passed on the [REDACTED] SOPs to his planning staff to inform the scenarios that are developed during the [REDACTED]. As noted above, the latest [REDACTED] SOPs do not have a specific section that addresses EOF procedures. [REDACTED] SOP [REDACTED] addresses the use of pen flares, advising that they are being used as part of the EOF continuum but neither directing their compulsory use when tactical circumstances permit nor referring to ISAF SOP [REDACTED].

31. At the CT level there were doctrinal gaps in the required EOF procedures. The SOPs that both the [REDACTED] and CT-[REDACTED] trained under did not specifically cover VCP nor EOF procedures. [REDACTED].

Understanding of ISAF EOF SOP [REDACTED]

32. ISAF SOP [REDACTED] is designed to provide a theatre-wide standard for EOF and VCP procedures. It does however leave room to take into account different tactical situations that may warrant commanders deviating from the standard in particular circumstances. It also leaves room for national primacy to override the SOP ([REDACTED]). There appears to be a widespread lack of understanding amongst Australian forces regarding its applicability as there is no evidence that contingents are briefed or trained on it prior to deployment.

33. The fact that pen flares are issued to troops in theatre and the existence of (admittedly insufficient) VCP stores and convoy signs IAW the SOP however, means that some elements of the SOP appear to have been adopted although when this occurred

[REDACTED]

[REDACTED]

8

and what prompted it is unknown. A general understanding that pen flares could be used in EOF scenarios is evident from the Legal Officer's briefing during the [REDACTED], the QA into the earlier incidents and the CO's supplementary order, but the fact that its use when tactical circumstances permitted was never mandated shows that neither [REDACTED] nor national authorities had directed MRTF-2 during training or once in-theatre to do so. While the COMISAF [REDACTED] Directive included the SOP as a reference and in the body, the copy it referred to was out of date. It is unknown whether the version the COM ISAF [REDACTED] Directive refers to directs the mandatory use of pen flares, but the fact that this error was not picked up by HQ ISAF, [REDACTED] shows the lack of familiarity of the requirements of the ISAF EOF.

Training provided to Australian Personnel

34. CT-[REDACTED] was warned out for deployment after the rest of the BG and consequently conducted a separate [REDACTED]. However, during [REDACTED] and during the [REDACTED] the training was conducted utilising [REDACTED]. That having been said, the soldiers were well practised at the mechanics of VCP conduct such as siting, establishment, grouping and conduct. While some presentations on EOF were given by the Legal Officer (where he believed he mentioned the use of pen flares as one of the alternatives) he could not recall directing that their use was mandatory as part of the EOF procedures. Neither the main body nor CT-[REDACTED] conducted an escalation of force activity IAW ISAF SOP [REDACTED] during their [REDACTED] or their [REDACTED]. This was not surprising given that neither CO 1 RAR nor CO CTC had been briefed on, or were aware of the existence of the SOP.

35. CT members had never seen, let alone trained on pen flares before being issued with them on arriving in theatre. The CO, OC CT-[REDACTED], RSM, CSM and all the soldiers interviewed had seen them for the first time in theatre. Only some JNCOs who had previously deployed to Afghanistan had previous experience of them. The soldiers when interviewed believed they were issued them primarily for [REDACTED]. RTF-1 had also been issued pen flares, but in their case believed they were to be used as [REDACTED]. Members of [REDACTED] Pl CT-[REDACTED] had been taken to the range and demonstrated the effect of a pen flare, but mainly to show how [REDACTED] it could be, and the impact that this would have on the [REDACTED]. As CT-[REDACTED] arrived in-theatre some [REDACTED] weeks after the issue of the CO's supplementary order regarding the use of pen flare (see para 28), they were unaware of its contents.

36. As a consequence, pen flares were normally carried [REDACTED] in individuals' webbing making it a time consuming process to render them ready for use. Two earlier incidents involving CT-[REDACTED] illustrate the unfamiliarity with ISAF SOPs regarding EOF. Both involved the firing of [REDACTED] shots without having utilised pen flares first. On the 24 Jun 09 incident the firer did not have a flare and the recommendation to the CO was that all personnel involved in [REDACTED] tasks be armed with pen flares with [REDACTED]. The EOF incident on 12 Jul 09 also involved

[REDACTED]

[REDACTED]

9

[REDACTED] fire without pen flares being used first. The QA officer noted that pen flares may have been utilised, although the speed with which this incident occurred likely precluded the use of a pen flares.

Identified Shortcomings in Training

37. Apart from their unfamiliarity regarding the use of pen flares mentioned previously, no other shortcomings had been identified in the training of the members involved in the relevant incident. The only shortcoming in training which was identified before the incident was that, during the [REDACTED] for CT-[REDACTED] and the BG HQ, there were deficiencies in relation to [REDACTED]. These matters were addressed by CTC staff with BG HQ staff, including the legal officer, and the CT involved. On CT-[REDACTED]'s [REDACTED], these matters were also the subject of additional training, although not apparently as a result of any deficiency of CT-[REDACTED].

Equipment Available and/or Used to Establish and Conduct the VCP

Equipment Used

38. Due to the nature of the task, the establishment of a VCP was not anticipated. Regardless, the decision to undertake the mission as [REDACTED] meant that no [REDACTED] stores could be brought with the callsign even if the task had been anticipated. The nature of the terrain and vegetation did not allow the winning of VCP material locally. The only equipment available to the callsign were the pen flares that each man carried with him.

Equipment Available

39. It needs to be reiterated that the task of this callsign was the investigation of a suspected POO and not the conduct of a VCP. Nevertheless, while there were some VCP stores available when MRTF-2 arrived, they were insufficient given that MRTF-2 arrived with a [REDACTED] combat team. These stores complied with the requirements of ISAF SOP [REDACTED]. Given the different vehicle mix of MRTF-2 some minor adjustments have needed to be made. The convoy signs were not suitable for the rear of the [REDACTED] as they obscured the rear window. [REDACTED] were available but not in sufficient quantity to equip all callsigns. Since the incident, additional VCP equipment and new signs have been ordered and the equipment held has been cross-levelled.

40. The size of the VCP stores is also an issue with the soldiers as they are [REDACTED], particularly if the callsign is on an [REDACTED] patrol with a great deal of stores such as rations and ammunition. MRTF-2 has often utilised [REDACTED] to establish VCPs to good effect. They are highly visible, provide good protection, are

[REDACTED]

[REDACTED]

10

effective ways of channelling vehicles and can be established and withdrawn very quickly.

Action Following Incidents on 24 Jun 09 and 12 Jul 09 and Its Adequacy

41. The QAs into the incidents on 24 Jun 09 and 12 Jul 09, which were both completed on 15 Jul 09, identified further training for the CT involved, CT-[REDACTED]. The members of CT-[REDACTED] were not available for interview as they were out of the country on ROCFA but the remarks of OC CT-[REDACTED] on the QA indicate that the callsign involved undertook remedial action. The CO had also issued the aforementioned supplementary order on 3 Jul 09 but the incident of 12 Jul 09 was considered to have unfolded too quickly for a pen flare to have been used. Members of CT-[REDACTED] arrived in Afghanistan on [REDACTED] Jul 09 and began operations on [REDACTED] Jul 09 but did not receive additional training in the use of pen flares, which had been one of the recommendations for CT-[REDACTED].

42. Unaware of the requirements of SOP [REDACTED] the MRTF addressed the issues piecemeal as they came to light and directed remedial action be taken by the callsign involved. The tempo during this period was significant as CT-[REDACTED] was heavily involved in operations including the death of PTE Ranaudo and serious wounding of another on 18 Jul 09. The RSM and Legal Officer began the process of researching the existence of previous TTPs with a view to consolidating procedures within MRTF-2, and cross-levelling available VCP stores. Given the operational tempo leading up to elections (which had most of MRTF-2 deployed for [REDACTED] weeks from [REDACTED] Aug 09), the late arrival of, and requirement to integrate and plan for the operational deployment of CT-[REDACTED] the steps taken were adequate in the circumstances.

Actions Following the Incident on 11 Aug 09 and Their Adequacy

43. Since the incident on 11 Aug 09, CT-[REDACTED] has reviewed its EOF training and procedures, an SOP has been issued for the BG which includes compulsory use of pen flares when tactical circumstances permit IAW ISAF SOP [REDACTED] and soldier's cards have been issued. It appears that there has been no formal reminder to all ranks in MRTF about ANA and ANP uniforms. CT staff felt that this action was not necessary, as their day-to-day patrolling activities exposed them to these uniforms (if and when they were worn) on a daily basis. Soldiers interviewed believed that they could recognise ANA and ANP uniforms, and there is no indication that the inability to identify the blue shirt worn by the pillion passenger as being part of a police uniform was a contributing factor to the incident.

44. New signage in sufficient quantities and appropriate size has been ordered from the contractor at Tarin Kowt and sufficient of the VCP stores contained in SOP [REDACTED] to equip the MRTF have also been ordered. The steps taken since the 11 Aug 09 incident are considered to be adequate.

[REDACTED]

[REDACTED]

11

45. The existence and requirements of SOP [REDACTED] were advised to COS HQJTF 633 once they became apparent from the inquiry and follow-up action was commenced. CO MTF-1 (des) and CO CTC were also both at Tarin Kowt on [REDACTED] and were advised of the requirement of SOP [REDACTED]. Both officers advised that it would be incorporated into [REDACTED] on return.

Other Nations' Procedures

46. The ANA have similar doctrinal approaches to VCPs, [REDACTED]. They allow vehicles to [REDACTED].

47. Both the [REDACTED] and [REDACTED] forces operate using EOF procedures IAW ISAF SOP [REDACTED]. [REDACTED] forces in Task Force [REDACTED] have incorporated the direction in SOP [REDACTED] into their SOI as SOI [REDACTED]. This includes the requirement for a soldiers' EOF card. [REDACTED] forces in Task Force [REDACTED] have done the same as Theatre Standing Order (TSO) [REDACTED], which also includes an annex outlining the correct use of pen flares.

48. The [REDACTED] advised that they follow the principles set out in SOP [REDACTED] even though [REDACTED] has not issued a specific EOF SOP. They also knew of the existence of SOP [REDACTED] before deploying. [REDACTED] legal officers received a half day brief on relevant [REDACTED] operational legal issues from their Directorate of Staff Operations and formal briefings from previous [REDACTED] legal advisers as part of their deployment preparation, one of the two officers had attended a two week Brigade Legal Adviser's course in the [REDACTED] prior to deployment and both attended legal adviser training conducted at RC(S) at the beginning of their deployment. The [REDACTED] BG understand the need for pen flares but currently only have one per [REDACTED].

Assessment of compliance with Law, ROE, Training Received and TTPs

49. The TOR do not appear to call for me to consider whether the members involved complied with the law and the ROE or put into practice the training they received and their TTPs. However, I record that, as with the MRTF-2, HQJTF 633 and HQJOC staff who have considered the matter based on less information than was available to me, I consider that the members involved complied with the law, complied with the ROE, effectively put into practice their training and TTPs and conducted the activity in which they were engaged effectively.

Adequacy of Applicable Orders, Instructions and Processes in Preventing Recurrence of Such Incidents

[REDACTED]

[REDACTED]

12

50. The mandated ISAF procedures are now in place and the level of soldiers' understanding of the ISAF EOF continuum has been raised to the appropriate level. While it is now possible to say that the applicable orders, instructions and processes that are in place to ensure that the ISAF EOF continuum is followed are adequate, it is not possible to claim that they will prevent the recurrence of an EOF incident that requires the application of lethal force. The nature of the operational environment is such that these incidents may occur in the future regardless of SOP [REDACTED] being adhered to. The firing of pen flares as part of the EOF continuum does not provide a guarantee that deadly force will be avoided, merely that it is another option that needs to be adhered to where circumstances permit.

51. Another concern is the inability of the national training system to know the existence and understand the importance of ISAF SOP [REDACTED]. While it should have come down the operational chain via [REDACTED] it did not, and this is always a possibility when working in a coalition environment. Given their tempo of operations and limited staffing, deployed TGs are poorly equipped to maintain an overwatch on the issue of relevant instructions and amendments from higher coalition HQ, particularly when they are not issued in hard copy. COMD ISAF [REDACTED] Directive of [REDACTED] was passed on by the national command element, but not ISAF SOP [REDACTED] to which it referred.

52. The risk of this was identified in Appendix 1 to Annex N of CJOPS Operations Order [REDACTED] – Operation Slipper. It noted as an operational risk that 'As a junior partner, we are impacted by [REDACTED] policy changes.' It advocated as a mitigating factor 'Engagement at all levels in both [REDACTED] and early identification of possible changes.' (Annex F). While the risk has been identified there should be a system in place where the national headquarters is able to monitor the issue of ISAF Directives, SOPs and relevant amendments that impact directly on Australian forces to ensure that they are given to the deployed forces where appropriate and to HQ JOC to inform the relevant training or briefing organisations in Australia. An audit of relevant ISAF SOPs and instructions should also be conducted to ensure that Australian forces are complying with extant ISAF guidance where appropriate.

Appropriateness of Training

53. The training that CT-[REDACTED] received was largely the same as that for the rest of MRTF-2, however the MRTF were never made aware of the complete EOF requirements of ISAF SOP [REDACTED]. While the soldiers were well trained in the mechanics of VCPs, they were inadequately prepared for the EOF procedures they were required to follow in Afghanistan.

54. While the Legal Officer took part in a pre-deployment [REDACTED] (although not in the majority of the [REDACTED]) under the tutelage of another legal officer, it had been left to him to use his own initiative to prepare himself professionally. He had

[REDACTED]

[REDACTED]

13

managed to obtain the relevant documents, but had not been equipped with the situational awareness to apply them in context.

55. In an earlier inquiry report relating to a different incident, I noted deficiencies in the training of a [REDACTED]. Given the political sensitivity of EOF and targeting incidents and the requirement to operate in a coalition environment, more attention should be paid to the preparation of legal officers deploying with future MRTF/MTFs and SOTGs.

Assessment of Consistency of Orders, Training, TTPs and Equipment with Requirement to Avoid Civilian Casualties

56. The requirement to avoid civilian casualties is well understood within MRTF-2. They have a consistency in their training (post 11 Aug 09) and in their equipment (post cross-levelling). Standardised TTPs are being issued but those that MRTF elements employed were broadly in agreement with each other although not with ISAF SOP [REDACTED] for the reasons already noted. The late deployment of CT-[REDACTED] into theatre inevitably made for a degree of inconsistency in the access to FRAGOs and supplementary orders for a period of time but this has now been rectified. Training and orders in Australia for deploying force elements must now be made consistent with ISAF SOP [REDACTED].

Conclusion

57. The incident on 11 Aug 09 that resulted in the death of an ANP officer and the wounding of another was conducted within the soldiers' ROE. Neither officer was wearing a uniform at the time of the incident. The pillion passenger was wearing a blue shirt although this did not become evident until after the casualties were attended to following the incident. While it is not possible to conclude whether the firing of a pen flare as part of the EOF procedures would have obviated the need to use lethal force in this instance, such an action was nevertheless mandated in the appropriate tactical circumstances by ISAF SOP [REDACTED] (later reinforced by the COM ISAF Directive dated [REDACTED]). The soldiers involved in the shooting were equipped with pen flares that the SOP mandated them to use, and both time and the tactical circumstances permitted their use.

58. The soldiers did not use pen flares because there was no awareness within MRTF-2 nor on the face of it within many of the previous rotations, the wider JTF and those responsible for force preparation in Australia that the use of pen flares as an EOF measure was mandated in the appropriate tactical circumstances by ISAF. The soldiers had been briefed in Australia that the use of pen flares was part of the EOF continuum but not that it was compulsory in the appropriate tactical circumstances in-theatre and they had never seen, let alone trained on pen flare sin Australia. They were not in possession of a soldier's card outlining the ISAF EOF procedures and soldiers involved in the incident claimed they were unaware of pen flares' use despite evidence that they

[REDACTED]

[REDACTED]

14

had received a presentation that mentioned the use of pen flares in the EOF continuum in Australia during [REDACTED]. The issue of a supplementary order by the CO saying that pen flares were to be used only as part of the EOF continuum predated the late arrival of CT-[REDACTED] into Afghanistan by two weeks.

59. While MRTF-2 did not direct its personnel to follow the ROE continuum mandated by SOP [REDACTED] there are compelling mitigating circumstances for them not doing so:

- a. The requirement was never articulated during their handover with MRTF-1, and there is no evidence that previous rotations had known of or complied with the SOP;
- b. No directive issued to the unit as part of its force preparation explicitly advised that it must follow the EOF procedures set out in the SOP;
- c. There were no briefings conducted prior to deployment that included the SOP's EOF mandatory requirements nor were the soldiers trained in them or in the use of the mandated pen flares;
- d. [REDACTED] did not direct this or previous rotations to follow ISAF SOP [REDACTED] nor have they incorporated them in the [REDACTED] SOPs in the way that [REDACTED] TF HQs have;
- e. COMD ISAF [REDACTED] Directive referenced an out-of-date version of SOP [REDACTED] in referring to EOF requirements which was not corrected by any superior HQ; and
- f. MRTF-2 had to conduct operations prior to the elections with one CT, [REDACTED] at the same time as absorbing casualties and then plan for and conduct a major MRTF-level operation from [REDACTED] in support of the national elections.

60. The terms of reference of this inquiry concentrated on the mechanics of VCP, but the more relevant issue is the inability of this MRTF and previous rotations to follow a mandated ISAF SOP that underlines a broader lack of knowledge about some specific ISAF EOF measures. The fact that successive rotations, the national HQ and training directives and establishments in Australia were unaware of an available and relevant ISAF document illustrates a deficiency in identifying and providing clear guidance regarding ISAF requirements.

Recommendations

61. It is recommended that:

[REDACTED]

[REDACTED]

15

- a. As a matter of urgency all future [REDACTED] for units being allocated [REDACTED] ISAF are to be include instruction on the requirements of ISAF SOP [REDACTED], issued with the prescribed soldiers' card and trained on the appropriate equipment (particularly pen flares). The appropriate use of pen flares in credible EOF scenarios is also to be incorporated into future [REDACTED];
- b. A review of ISAF SOPs be conducted to ensure that Australian forces are complying with all mandatory requirements that do not contravene Australian national guidance or regulations;
- c. A system be put in place so that all new, or amendments to existing ISAF SOPs that impact on Australian forces' are identified and passed on to units effected and to HQ JOC so they can be incorporated into relevant unit and single-service training and briefs;
- d. Deploying legal officers have early access to relevant executive documents including ISAF Directives and SOPs, particularly those which bear on the use of force, enabling them to provide up-to-date briefings to deploying personnel and advice to commanders;
- e. To better prepare future legal officers deploying with MRTF/MTFs and SOTGs, the relevant [REDACTED] should utilise the assistance of a previous, recent incumbent to prepare the legal officer before and if necessary during the activity;
- f. To better prepare future legal officers deploying with MRTF/MTFs and SOTGs, those officers should attend the RC(S) legal adviser training prior to, or at the start of, their deployment;
- g. **No** administrative action be taken against any person involved in the incident; and
- h. **No** conduct warrants further investigation by the Australian Defence Force Investigative Service

[REDACTED]

[REDACTED]

Colonel
Inquiry Officer

[REDACTED]

[REDACTED]

16

November 2009

Annexes:

- A. A/CJOPS Instrument of Appointment of Inquiry Officer of 26 Aug 09
- B. A/CJOPS Terms of Reference of 26 Aug 09
- C. Email HQJOC SO2 Legal Ops/Inquiry Assistant of 28 Aug 08
- D. Email HQJOC DLEGAL/Inquiry Officer of Sep 09
- E. RESERVED
- F. HQJOC [REDACTED] (CJOPS OPORD [REDACTED] – OP SLIPPER) of 30 Jul 09
- G. [REDACTED]
- H. [REDACTED]
- I. [REDACTED]
- J. [REDACTED]
- K. [REDACTED]
- L. [REDACTED]
- M. [REDACTED]
- N. ISAF COMD's Counterinsurgency Guidance (no date, GEN McChrystal)
- O. [REDACTED]
- P. [REDACTED]
- Q. [REDACTED]
- R. RESERVED
- S. RTF-2 SOPs as at 16 Mar 07 (EXTRACT – Cover and table of contents)
- T. 1 RAR (MRTF) SOPs Aug/Sep 08 (EXTRACT –Cover and sample page with date)
- U. MRTF-2 SOPs of 09 (EXTRACT –Cover and table of contents)
- V. [REDACTED]
- W. RTF-4 TTP Vehicle Checkpoints (no date)
- X. [REDACTED]
- Y. [REDACTED]
- Z. [REDACTED]
- AA. [REDACTED]
- BB. MRTF-2 EOF incident QA report (re 241000 DE Jun 09 incident) of 15 Jul 09
- CC. MRTF-2 EOF incident QA report (re 120858 DE Jul 09 incident) of 15 Jul 09
- DD. RESERVED
- EE. [REDACTED]
- FF. [REDACTED]
- GG. [REDACTED]
- HH. [REDACTED]
- II. RESERVED
- JJ. RESERVED
- KK. Interview with [REDACTED] on 7 Sep 09
- LL. Interview with [REDACTED] on 8 Sep 09
- MM. Interview with [REDACTED] on 8 Sep 09
- NN. Interview with [REDACTED] on 8 Sep 09

[REDACTED]

[REDACTED]

17

- OO. Interview with [REDACTED] on 8 Sep 09
- PP. Interview with [REDACTED] on 8 Sep 09
- QQ. Interview with [REDACTED] on 8 Sep 09
- RR. Interview with [REDACTED] on 8 Sep 09
- SS. Interview with [REDACTED] on 8 Sep 09
- TT. Interview with [REDACTED] on 8 Sep 09
- UU. Interview with [REDACTED] on 9 Sep 09
- VV. Interview with [REDACTED] on 9 Sep 09
- WW. Interview with [REDACTED] on 9 Sep 09
- XX. Interview with [REDACTED] on 9 Sep 09
- YY. Interview with [REDACTED] on 9 Sep 09
- ZZ. Interview with [REDACTED] on 10 Sep 09
- AAA. Interview with [REDACTED] on 10 Sep 09
- BBB. Interview with [REDACTED] on 11 Sep 09
- CCC. Statement by [REDACTED] of 15 Sep 09
- DDD. [REDACTED]
- EEE. [REDACTED]
- FFF. [REDACTED]
- GGG. RESERVED
- HHH. RESERVED
- III. [REDACTED]
- JJJ. MRTF-2 Specimens for signs (no date)
- KKK. [REDACTED]
- LLL. [REDACTED]
- MMM. [REDACTED]
- NNN. [REDACTED]
- OOO. [REDACTED]
- PPP. [REDACTED]
- QQQ. [REDACTED]
- RRR. [REDACTED]
- SSS. [REDACTED]
- TTT. Diagram of incident

[REDACTED]