

## **Annex ... : Legal aspects**

This Annex contains guidance for planners in charge with the drawing of OPLAN Annex AA and E.

### **1 - GENERAL GUIDANCE.**

Within the framework of international and national laws, the political authorities provide direction to commanders governing the use of force. Thus, the Operation Plan (OPLAN) shall be drafted and executed in accordance with international law and the domestic law of Troop Contributing Nations and Host Nations.

The applicable legal instruments will involve :

- International Legal Instruments such as conventions, treaties, agreements,
- The principles of the Law of Armed Conflict (LOAC).
- United Nations Security Council Resolutions .
- United Nations Mandate,
- Domestic law.
- Rules of Engagement (ROE) .

### **2 - SPECIFIC GUIDANCE.**

**21 - Annex AA** to OPLAN will recall the relevant international legal instruments to which the plans and the operations to be carried out shall refer. It shall contain following appendix :

APPENDIX 1. UN Security Council Resolution N° 4954, dated 21 Mai 2004,

APPENDIX 2. Peace Agreement signed between the Blue, Yellow and Orange states, and the PIVERT on 21 November 2003

APPENDIX 3. Agreement between ECOWAS and the States of Blue, Yellow and Orange concerning the Status of ECOWAS Force (SOFA),

APPENDIX 4. Agreement between ECOWAS and the States of Blue, Yellow and Orange concerning the support provided by host nations (HNS Agreement).

**22 - Annex E** to OPLAN will lay out the Rules of Engagement and their implementation procedures.

#### **223 - Principles**

**a Introduction.** In the conduct of military operations, military forces are authorised to use force in self-defence or pursuant to authorised Rules of Engagement (ROE). International law defines the lawful limits for the use of force during military operations. National law may further limit the use of force by member States of, a coalition in certain types of military operations or in certain situations. Within this legal framework, the ECOWAS DSC provides political direction for the conduct of military operations, including authorisations for, and limitations on, the threat or use of force or actions which might be construed as provocative.

**b ROE Definition.** ROE are directives to military forces (including individuals) that define the circumstances, conditions, degree, and manner in which force, or actions which might be construed as provocative, may or may not, be applied. ROE are not used to assign tasks or give tactical instructions. ROE do not limit the inherent right of self-defence. With the exception of self-defence, the ROE authorised are the sole authority for Task Force to use force.

**c Self-defence.** Self-defence is the use of such necessary and proportional force, including deadly force, to defend themselves against attack or an imminent attack. The following definitions apply:

- “Necessary” means that use of force is indispensable for securing self-defence.
- “Proportional” means a response commensurate with the perception of the level of the threat posed. Any force used must be limited to the degree, intensity, and duration necessary for self-defence and no more.
- “Imminent” means that the need to defend is manifest, instant, and overwhelming.
- “Attack” is the use of force against ECOWAS Force and personnel

Nothing in the ROEs shall negate a Commander's right and obligation to take all necessary and appropriate action for unit and individual self-defence. All personnel have the right to exercise the inherent right of self-defence.

**d Use of Force.** During ECOWAS Force operations, the following use of force principles apply:

(1) Reasonable and prudent effort should be made to control a situation without the use of force. When time and conditions permit, the potentially hostile aggressor should be warned and given the opportunity to withdraw or cease threatening actions, and further warned that ECOWAS Force will take action, as necessary. The on-scene commander should consider actions that do not involve the direct application of armed force to warn any potentially hostile aggressor.

(2) With respect to mission accomplishment, the degree of force used must be no more than necessary to carry out duties and accomplish assigned objectives of the mission. Force used must be limited to the degree, intensity, and duration necessary to achieve the objective.

(3) ECOWAS Force may take reasonable and necessary actions to protect their national property, the property of other ECOWAS Force and such other property as is placed under their protection in connection with their assigned duties, with special emphasis on their own facilities and equipment. The degree of force used depends upon the ROE, the circumstances, national law, and the nature of the property.

(4) Unless specifically directed otherwise, ECOWAS Force being subjected to harassment, intrusion, or other interference should continue operations to the maximum extent possible in order to achieve all assigned objectives. No ECOWAS Force should yield to any effort to impose such interference upon their mission accomplishment. ECOWAS Force nevertheless should avoid action which might be perceived as provocative or aggressive. Should actions to counter such interference be deemed necessary, they must be authorised by ROE.

**e Military Necessity.** When authorised by ROE, force may be used if there is no other militarily feasible way consistent with ECOWAS Force security to accomplish the mission. Whenever the operational situation permits, every reasonable effort must be made to resolve a potential hostile confrontation by means other than the use of force (e.g. through negotiations).

**f Duty to Challenge and Warn.** Every reasonable effort should be made to defuse confrontation by initiating the challenge and warning procedures. When the operational situation permits, an essential step in attempting to resolve a potentially hostile confrontation, short of the use of force, is the exercise of challenge and warning procedures. Warning shots when authorised, are to be included as part of the challenge procedure, but they must be clearly perceived as such and extreme caution should be used to limit their use to circumstances where it is militarily prudent to fire warning shots and it is safe to do so.

**g Duty to Use Proportional/Minimum Force.** In accordance with the principle of proportionality any force used must be limited to the degree, intensity, and duration necessary to achieve the objective for which it is used and no more. While always dependent on the circumstances, this may

require the use of single, aimed shots, i.e. restrictive directed fire. It is recognised that in some circumstances operational urgency may dictate the immediate use of a deadly force. However, the primary aim always is to control the situation as quickly as possible with minimum force, proportional to the threat and limited to the immediate area of hostilities.

**h Duty to Observe Fire/Target Identification For Indirect Fire.** Targets intended to be engaged with indirect fire must be observed or positively identified by other equally reliable assured means of identification. Engaging targets acquired or identified by other than visual means may only be authorised in specific circumstances and must be approved by the authorising commander.

**i Avoidance of Collateral Damage.** In all cases, the collateral damage expected to result from an authorised use of force must not be disproportionate to the legitimate purpose for which that force is used. Intentional attacks on civilians or property which is exclusively civilian or religious in character, except if that property is being used for military purposes or where such an attack has been authorised under ROE, are expressly prohibited.

**j Prohibition Against Reprisals.** The punitive use of force is prohibited.

**k Duty to Report.** Each confrontation resulting in a detention, or involving the use of deadly force, including the firing of warning shots or use of riot control means, is to be reported through the chain of command as soon as possible, whether it results in casualties or not.

**l Right to Position Defence.** ECOWAS Force are not required to withdraw or surrender their position, personnel or equipment in order to merely avoid the authorised and legitimate use of force.

**m Geographic Limitation.** No military operations (other than necessary deployment and support), including hot pursuit, are to be conducted outside the fined area of operations. ECOWAS Force ROE only apply within the ALPHALAND territory.

## **224 - ECOWAS Force ROE.**

**a General Outline and Application.** ECOWAS Force authorised ROE enable the successful execution of the mission with the use of minimum force proportional to the threat, while safeguarding the participating forces. They apply to all ECOWAS forces unless otherwise restricted by national clarifying instructions which, if issued, will be provided to Commander ECOWAS Force (COMANFOR) as early as possible. While remaining predominantly defensive in nature, the ROE recognise the potential need for more robust action if necessary to ensure the successful accomplishment of the mission, and provide a clear definition of the circumstances under which the use of force by ECOWAS Force may be justified.

### **b ROE Request, Authorisation and Implementation Procedure**

(1) ECOWAS Force ROE are to be requested, authorised and implemented in accordance with following process.

(2) Each ROE must be authorised for implementation. Authorisation to implement ROE must be requested through a ROE Request (ROEREQ) Message. The ECOWAS DSC will authorise all or part of the requested ROE with a ROE Authorisation (ROEAUTH) message and COPER will implement the authorised ROE with a ROE Implementation (ROEIMPL) Message. When implementing ROE for forces under their Operational Control (OPCON), Operational Command (OPCOM), Tactical Control (TACON), or Tactical Command (TACOM), Joint forces commander must act within the ROE authorised, but are not obliged to pass along to their subordinates the full range of the ROE authorised. If COPER later withdraws or restricts ROE previously implemented, JFC must immediately update their direction to subordinates in order to comply with the updated ROEIMPL.

(3)The only ROE authorised for use by ECOWAS Force are the ROE that have been implemented by the COPER in his implementation directive.

**c** **ROE Changes and Supplemental ROE.** The ROE authorised by the ECOWAS DSC in the ROEAUTH and implemented by COPER in the ROEIMPL, may only be changed with the approval of the CIMIN. Any limitation or restriction that is viewed as a potential threat to the safety of the force and/or the successful conduct of the mission should be addressed immediately upon discovery and reported up the chain of command. Supplemental ROE measures that may be required due to changes in the operational situation will be submitted in a ROEREQ. This includes requests for ROE requested but not previously authorised for use, as well as any new or additional ROE, as required by the situation.

## **225 - General Considerations.**

**a** **Detention of Persons.** ECOWAS Force do not have a specific mandate or assigned tasks for public safety and order in VERT. Nevertheless, it is possible that, during the course of executing their duties, ECOWAS Force may be required to detain persons for force protection or self-defence, or as authorised by ROE when necessary for execution of the mission.

(1)Persons detained by ECOWAS Force will be disarmed, if necessary, and at the discretion of the on-scene commander, either released or removed to designated sites for hand-over as soon as possible to an appropriate person or agency as determined by COMANFOR. Up until the detained person is handed over to the appropriate person or agency, all detained persons shall be treated humanely and in accordance with internationally recognised standards of human rights.

(2)The detention of any person by ECOWAS Force, even if the detainee is released by the on-scene commander, is to be reported forthwith through the chain of command.

**b** **Detention and Seizure of Property.** In line with the ECOWAS Force mission, TF forces may only detain or seize property, including vehicles, where necessary in the context of force protection and self-defence.

**c** **Authority To Search.** ECOWAS Force forces may:

- (1)Search persons when necessary in the execution of authorised detentions
- (2)Search property, including vehicles, when necessary for force protection and self-defence.

**d** **Warning Shots.** When authorised by ROE, warning shots may be fired whenever, in the opinion of the on-scene commander:

- (1)Warning shots would deter an armed hostile or potentially hostile individual or group from obstructing the mission or from threatening the safety of members of TF forces.
- (2)The use of warning shots is necessary for the execution of the mission to manifest resolve to an armed hostile or potentially hostile individual or group.
- (3)The use of warning shots would deter or prevent a civilian individual, group or crowd, which poses a threat to the safety of members of TF forces or persons or property under his command or protection, from engaging those forces or that property.

## **226 - Limitations.** Unless directed by Force Commander or in cases of self-defence there is no authority to:

- a Fire at religious buildings or facilities, museums, or cultural or historic works.
- b Fire into areas, buildings or houses populated by civilians.
- c Destroy bridges, tunnels, dams, or dikes.

**227 - Prohibitions.** It is prohibited to:

- a Use any incendiary weapon (this does not include use of ammunition such as white phosphorous used solely for target marking or identification).
- b Employ a means of delivery of mines.
- d Employ booby trap devices.
- e Destroy civilian property not being used for military purposes except where such destruction has been authorised under ROE.

## LIST OF ROE AUTHORISED BY ECOWAS DEFENSE AND SECURITY COMMISSION

### Reference.

A : STRATEGIC OPLAN ANNEX E - RULES OF ENGAGEMENT

B :

### Introduction.

The following Rules Of Engagement (ROE) authorised by the DSC for the beginning of ECOWAS operations in VERT will apply to all ECOWAS forces within the Joint Operation Area (JOA) in implementation of the UN Mandate given by the Resolution N° 4954, dated 21 Mai 2004.

102 Entry into BLEU, JAUNE and ORANGE geographic area and/or airspace and/or territorial waters for implementation of ECOWAS missions related with UN Mandate is authorised.

111 Positioning of ECOWAS forces relative to BLEU, JAUNE AND ORANGE or PIVERT forces is unrestricted.

132 Action to prevent boarding, detention or seizure of ECOWAS Force's vessels, aircraft, vehicles or property is authorised. Use of minimum force is authorised.

141 Intervention to implement ECOWAS direction of non-military activities (such as commercial trade or transport) is authorised. Use of minimum force is authorised.

151 Passing of warnings to vessels, aircraft vehicles or persons interfering with current operations is authorised.

161 Ordering of diversion(s) interception, pursuit, identification to vessels, aircraft, vehicles, or persons demonstrating hostile intent or which commits or directly contributes to a hostile act is authorised.

172 If opposed, boarding of vessels, aircraft or vehicles demonstrating hostile intent or which commits or directly contributes to a hostile act is authorised. . Use of minimum is authorised.

221 Illumination of hostile forces by usual means (such as oriented lights, fire works, flare bullets, etc...) is authorised.

240 ECOWAS troops exercising in the presence of BLEU, JAUNE AND ORANGE or PIVERT forces is prohibited.

250 Conduct of simulated attacks against BLEU, JAUNE AND ORANGE or PIVERT forces units is prohibited.

290 Harassment is prohibited.

331 Use of minimum force to prevent interference with ECOWAS personnel during the conduct of their mission is authorised.

332 Use of minimum force to defend non-ECOWAS forces or personnel or property, either civilians or with designated special status under attack of an aggressor is authorised.

333 Use of minimum force to prevent the taking possession of or destruction of ECOWAS property is authorised.

- 334 Use of minimum force to defend against intrusion into ECOWAS military restricted area is authorised.
- 380 Laying of mines is prohibited throughout the joint operations area (JOA).
- 423 Attack against hostile force(s) or target(s) which have previously attacked, or directly contributed to an attack, is authorised.
- 425 Attack on military installation(s), facility(ies), equipment, and unit(s) which are engaged in or support military activity that threatens ECOWAS force(s), person(s) or property is authorised.
- 426 Attack on force(s) or target(s) which substantially contribute to the conduct of hostile military operations against ECOWAS force(s), or persons or property with designated special status is authorised.

