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CANADIAN FORCES COLLEGE - COLLÈGE DES FORCES CANADIENNES

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**Critical Mission: Rules of Engagement Development and Dissemination at the
Operational Level of Command**

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ABSTRACT

Commanders at all levels are responsible for the proper execution of the rules of engagement (ROE) that apply to the operation at hand. The sometimes tedious task of creating ROE may be held at the strategic level or delegated to the operational level. The involvement of operational commander is crucial to ensure ROE is appropriate for the operation, is properly disseminated and trained to all forces assigned, and is strictly monitored and led.

Failure of the operational commander to ensure an adequate ROE process is in place can lead to consequences beyond the operational level. Prisoner abuse by American soldiers at the Abu Ghraib prison in Iraq is an example where, in the end, problems with ROE created an atmosphere that allowed some soldiers to commit acts that continue to have negative strategic impacts almost two years later. On the other hand, an incident in the late 1990s, on the U.S/Mexico border involving U.S. marines on a drug enforcement support operation demonstrates how proper dissemination and use of ROE stands the test of public scrutiny - even when someone unfortunately dies.

Managing ROE at the operational level is a complex task that should not be taken lightly. The commander, responsible for many tasks and functions, must have in place a systematic and effective approach to ensure proper ROE is implemented and ROE is strictly monitored. The task is so important that mission success will surely depend on it because errors made in ROE development and implementation can have far reaching strategic impacts.

INTRODUCTION

Although exposed to and partially trained on use of force (UOF) policies throughout their career, commanders at the operational level may not be prepared as well as they should be to properly develop and administer UOF and ROE policies.

Commanders at the operational level who are not properly trained to develop and administer ROE and UOF policies can severely hamper or completely sabotage the desired outcome of an operation. Their errors undercut the long term public support and soldier commitment to an ongoing operation.

The entire spectrum of conflict from domestic peacekeeping operations to total war requires commanders at all levels to intimately know the ROE and/or UOF policies for the specific operation being conducted. In turn, commanders must ensure their subordinates know and live by these policies. Throughout history there are many examples of ROE/UOF blunders either from guidance that was not clear or from guidance not taken. Of course, there are many more examples of military personnel perfectly administering the appropriate ROE when clear, precise rules were provided. Society expects the military to conduct itself properly, so broken ROE/UOF policies receive much more scrutiny and potentially calamitous effects.

Political and strategic leaders provide the broad guidelines for UOF and ROE. These Presidents of countries, Defense Ministers, Prime Ministers and senior military leaders give the boundaries for UOF for a particular operation. Tactical commanders receive orders from the operational commander on how to employ force (UOF) and specific guidelines on how to conduct missions in accordance with current law and strategic and operational guidance. Tactical commanders in turn ensure subordinates

conducting missions are thoroughly familiar with all applicable orders. The soldiers, airmen, sailors, marines and even civilians working in the organization put these ROE to use when actually conducting the missions that support the operational and tactical goals.

The Operational Commander is the critical link between the Strategic guidance and the tactical execution. It is the Operational Commander's responsibility to fully develop and scrutinize UOF and ROE policies for a specific operation or campaign. He takes the broad guidance given by strategic leaders and clearly defines the parameters by which the operation is supposed to be administered. He then transmits these requirements in the form of specific ROE orders. Accomplishing this task at the operational level of command involves much critical thinking and coordination with experienced staff officers, legal experts and commanders. It also involves the very critical task of looking into the future and aggressively assessing what may happen in the upcoming operation. To complicate matters more, most of today's operating environments involve Joint, Coalition, and Interagency organizations, so UOF policies must be made clear and coordinated across different (possibly many) cultures and societies. This is a monumental task for the Operational Commander who, during preparation for an operation or campaign, has many competing objectives. Although a complex and very important, time consuming task, creating and distributing sound ROE orders from the operational level is not impossible. ROE development, dissemination and oversight is one of the most, if not the most, critical tasks the operational commander undertakes; ensuring a plan is in place to manage the process is key and will greatly assist with overall mission success.

BACKGROUND

Within the realm of the Law of Armed Conflict (LOAC) lie the rules on how the civilized world conducts itself during times where force of some type must be used to help achieve a desired goal. These rules basically fall under the broad definition of UOF policies and procedures and more specifically, ROE. Some explanation of terms will be helpful to set the background for this paper.

First, what is LOAC? “The law of war, also known as the LOAC or humanitarian law, is a subset of international law that has evolved through centuries of efforts to mitigate the harmful effects of war.”¹ According to The Canadian National Defense Headquarters, “the LOAC, considered in the broadest sense, determines when states may resort to the use of armed force and how they may conduct hostilities during armed conflicts.”² This paper will focus on how armed forces conduct hostilities during armed conflict and will leave the intriguing issue of how States resort to armed conflict – basically the road to war – for another paper because it is more of a strategic issue. The LOAC regulates the conduct of hostilities to protect victims, safeguards fundamental human rights of prisoners of war, wounded, sick, and civilians as well as sparing the civilian population from the dangers of military operations.³

There are many guidelines and laws that make up the full scope of LOAC, but generally there are two distinct portions: The Hague Conventions and the Geneva Conventions where specific rules are provided for a myriad of activities that occur on and around an area where military operations are taking place. Military operations take place

¹ Supreme Court Debates, *The Law of War*, vol 7, Issue 6, September 2004, 167

² Department of National Defence, *The Law of Armed Conflict at the Operational and Tactical Level*, (Ottawa: DND Canada, 2001), 1-1

³ Summary from *Law of Armed Conflict at the Operational and Tactical Level*, 1-1

across the entire spectrum of conflict and include the fairly straightforward missions involved with domestic support operations to the very complex missions involved in total war. The Hague Conventions of 1899 and 1907 “prescribes the ROE during combat and is based on the key principles of military necessity and proportionality.”⁴ The Geneva Conventions “emphasizes human rights and responsibilities, including the humane and just treatment of prisoners.”⁵ For example, the Geneva Convention gives very specific guidance on the treatment of the wounded and sick:

Members of the armed forces...who are wounded or sick, shall be respected and protected in all circumstances. They shall be treated humanely and cared for by the Party to the conflict in whose power they may be, without any adverse distinction founded on sex, race, nationality, religion political opinions, or any other similar criteria. Any attempts on their lives, or violence to their persons, shall be strictly prohibited; in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments; they shall not willfully be left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created.⁶

The countries who agree to the principles of the Geneva and Hague conventions all abide by the basic rules that are included in the broad category LOAC.

UOF is the term that describes how nations apply the LOAC to a specific crisis. Like the LOAC, UOF has two distinct facets. One deals with how a nation that is entering a conflict will proportion its forces to conduct a campaign against another; the other deals with broad guidelines on how military elements in a campaign or operation will implement force to achieve their objectives. In legal terms, it is *jus ad bellum* and *jus in bello*. Whereas the decision to wage war is referred to as *jus ad bellum* and the

⁴ Supreme Court Debates, *The Law of War*, 167

⁵ Ibid, 167

⁶ *Collection of Documents on the Law of Armed Conflict, Geneva Convention (I) For the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field – 1949*, ed by Directorate of Law Training (2005), 80 The *Collection of Documents on the Law of Armed Conflict* includes a comprehensive compilation of treaties and international agreements pertaining to the Law of Armed Conflict.

broad meaning of the other term, *jus in bello*, “is to reduce the horrors inherent therein to the greatest extent possible in view of the political purpose for which war is fought, namely to achieve one’s policies by victory over one’s enemy.”⁷ Again, this paper focuses on the guidelines for using force once the operation or campaign has begun – *jus in bello*. In this respect, UOF is the link between the LOAC and the ROE that guide actions at the lowest levels in the conflict. Nations usually define UOF in broad terms for their soldiers. For example, the Canadian joint doctrine manual on UOF in CF (Canadian Forces) Operations explains, “the CF are an instrument of national policy and power. Therefore, deployment of the CF on operations and the UOF by the CF are controlled by, and subject to the authority and direction of the Canadian government.”⁸ The description of UOF for Canadian Forces continues by explaining that “both national and international law require that any UOF by the CF must be controlled and limited to the extent that is proportional or reasonable and necessary to achieve legitimate military objectives.”⁹

ROE for an operation or campaign are specific orders the commander develops and disseminates to ensure the laws of armed conflict and UOF policies are diligently followed. For instance, in Canada “ROE are the command and control instrument by which the CDS controls the application of force in CF operations.”¹⁰ These ROE should be detailed and provide the soldier, sailor, marine, airman or civilian on the battlefield with specific rules by which force may or may not be applied. Condensing the sometimes cumbersome and technical LOAC, along with the general broad guidance on

⁷ L.C. Green, *The contemporary law of armed conflict*, (Manchester University Press, 1993), 14

⁸ Department of National Defence, *Use of Force in CF Operations*, Joint Doctrine Manual B-GJ-0050501/FP-000, (Ottawa:DND Canada, 2001), 1-1

⁹ *Ibid*, 1-1

¹⁰ *Ibid*, 1-1

how force can be applied, is a key task for the operational commander who is responsible to ensure the operation or campaign is conducted in accordance with all applicable guidance. The complicating factor of multinational, interagency and non-governmental entities makes it a continuing challenge to ensure all who are participating understand and follow the ROE. For example, more than thirty nations are conducting operations in Afghanistan today. Different

ABU GHRAIB

While Saddam Hussein was the leader of Iraq, Abu Ghraib “was one of the world’s most notorious prisons.”¹¹ Torture, executions, extremely bad living conditions in a grossly overcrowded jail was the standard.¹² To most observers in the world it couldn’t get worse. But now, the entire world knows and remembers Abu Ghraib as the prison where United States soldiers improperly treated (some believe tortured) prisoners. This improper treatment was displayed to the world on April 28, 2004 during a broadcast of CBS’s 60 Minutes.¹³ This improper treatment included a myriad of activities that were at a minimum humiliating and were at times criminal, even in a time where the free world had little or no sympathy for terrorists or possible terrorists.

While introducing a book containing the extensive collection of documentation surrounding the events at Abu Ghraib, the editor points out that “they (documentation) are an extraordinary paper trail to mortal and political disaster; to an episode that will soil the image of the United State(s) in the eyes of the world for years to come.”¹⁴ In this author’s view, improper development, dissemination, training and use of ROE greatly contributed to this unfortunate incident in U.S. history. During an extensive investigation into the incidents reported at Abu Ghraib, the U.S. Army Major General in charge of the investigation listed some of the missteps. These included:

¹¹ Seymour Hersh, *Chain of Command* (HarperCollins Publishers Inc, NY, 2004), 20

¹² Ibid, 20

¹³ Ibid, 22

¹⁴ Karen Greenberg and Joshua Dratel, *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press, NY, 2005), xiii note: *The Torture Papers* is a 1,249 page compilation of memos, directives and investigations/reports. Some of the reports include the International Committee of the Red Cross (ICRC) Report, The Taguba Report (comprehensive investigation of the 800th Military Police Brigade, The Association of the Bar of the City of New York, The Mikolashek Report, The Schlesinger Report, Vice Admiral Church’s Brief, and more. Because of the wide range of reports compiled in a single document, *The Torture Papers* is heavily acknowledged in the discussions about Abu Ghraib.

Breaking chemical lights and pouring the phosphoric liquid on detainees, pouring cold water on naked detainees; beating detainees with a broom handle and a chair; threatening male detainees with rape; allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against a wall in his cell; sodomizing a detainee with a chemical light and perhaps a broom stick and using military working dogs to frighten and intimidate with threats of attack, and one instance of actually biting a detainee.¹⁵

In addition to these infractions, who can forget the very explicit images shown around the world by various magazines and newspapers that depict U.S. soldiers taunting prisoners in a variety of ways. These included piling naked prisoners in a pyramid, parading around naked prisoners, leading naked prisoners around on a leash and many pictures of guards (both male and female) smiling and laughing at various humiliating activities being performed by prisoners.¹⁶

To determine how events such as this could happen in this day and age, the trail is a long and winding one, but ultimately, the ROE at the soldier level were not clear, not properly promulgated or not enforced. There is considerable debate as to who should actually be held responsible for these abuses, but in the end the soldiers actually committing the abuse are getting punished by courts martial and some of the leaders (up to the brigade commander) are being punished to a lesser extent. As of the writing of this paper, junior soldiers have been court marshaled and received prison sentences for mistreating prisoners at Abu Ghraib. Senior officers such as the battalion and brigade commanders were at most relieved of command with no jail time. But, the real loss is the permanent scar the events at Abu Ghraib have left on the United States and its ability to truly convince the world that it will, in the future, conduct itself within the guidelines laid out in the LOAC.

¹⁵ Hersh, *Chain of Command*, 22

¹⁶ The New Yorker (online), www.newyorker.com, posted 30 April, 2004.

The origins of the problems encountered at Abu Ghraib can be traced back to the initial stages of the war in Afghanistan. Early in this conflict, it was soon evident that “the United States lacked what is called human intelligence: spies inside terrorist organizations.”¹⁷ The United States National Command determined that the only way good intelligence information was going to be obtained would be “getting information by questioning captured terrorist suspects.”¹⁸ At this point there were high level discussions in the United States where White House Counsel Alberto Gonzales determined “Afghanistan was a ‘failed state’ to which the (Geneva) convention did not apply.”¹⁹ In the meantime, the detainees were moved from Afghanistan to Guantanamo Bay, Cuba where the United States set up a special confinement area for these detainees. Still at the strategic level, President Bush agreed and declared the prisoners at Guantanamo Bay (where the captured combatants from Afghanistan were taken) were unlawful combatants and the portion of the Geneva Convention that deals with prisoners of war did not apply.²⁰ An interesting side note is that Secretary of State Powell and the State Department legal advisor did not agree with the finding and tried to get the declaration reversed, but to no avail.²¹

Taliban and al Qaeda prisoners started arriving at Guantanamo Bay in January 2002, at which time the Secretary of Defense, Donald Rumsfeld, declared al Qaeda and Taliban prisoners were “not entitled to prisoner of war status” and should be treated “to the extent appropriate” in a manner consistent with the Geneva Convention.²²

¹⁷ Greenberg and Dratel, *The Torture Papers*, xiii

¹⁸ *Ibid*, xiii

¹⁹ *Ibid*, xiii

²⁰ *Ibid*, xiv

²¹ *Ibid*, xiv

²² *Ibid*, xxv

Throughout the year the Commander of the United States Southern Command (USSOUTHCOM) – the operational commander for the Guantanamo Bay mission-- worked to develop the rules by which the personnel under him would treat these prisoners. Memos went back and forth from USSOUTHCOM to the Chairman of the Joint Chiefs of Staff to the Secretary of Defense and even the President of the United States. Questions were raised on what the exact status of these prisoners at Guantanamo Bay were and what exactly interrogators could do while trying to extract information from these prisoners. Included were legal analysis from U.S. military lawyers in the entire chain of command from Guantanamo through the Joint Staff and Secretary of Defense. Even the Attorney General of the United States was actively involved in the legal wrangling about the status of these prisoners.²³ Finally, in a memo from the Secretary of Defense to the Commander of USSOUTHCOM on 2 December 2002, specific approval was given for interrogation techniques including “mild non-injurious physical conduct,” only to be rescinded in January 2003 because further review was deemed necessary.²⁴ While all of this discussion over proper handling of prisoners and in what category the prisoners were in and what guidelines were to be used while handling and interrogating these prisoners, the soldiers on the ground at the tactical level were left to deal with the prisoners under broad ROE. All the while, they were completing daily tasks that put them in contact with an enemy who were trained and skilled at killing and were ready to kill any American at any time whenever the opportunity expressed itself. Finally, in April 2003 the Secretary of State provided approved interrogation techniques to the Commander of USSOUTHCOM and even specified interrogation techniques that

²³ Ibid, summary, xxvi

²⁴ Ibid, xviii

must come to the Secretary of Defense level for approval because of the possibility of a perception the techniques could be in violation of the Geneva Convention.²⁵ These rules were almost immediately sent to the tactical level from USSOUTHCOM.

At about the same time, coalition forces were beginning to enter Iraq. ROE for the operations that make up what would soon be known as Iraqi Freedom were developed by the United States Central Command and promulgated to the subordinate commands by way of operation orders. While moving through Iraq in a generally offensive posture, these rules were generally straight forward and rarely violated. But, as the conflict persisted, many prisoners were taken from the battlefield and the same questions as in Guantanamo Bay arose about the status of these prisoners.

Extensive investigations into detainee operations in Iraq and Abu Ghraib before and after the revelation that prisoner abuse had taken place in Abu Ghraib clearly show that there were a host of problems and issues at the Abu Ghraib prison.²⁶ These problems included, but were not limited to: inadequate training, young soldiers who did not have the aptitude to clearly understand LOAC, reserve versus active status (soldiers guarding Abu Ghraib were reserve soldiers), soldiers just following orders, pressures to soften up prisoners, fraternization, and low discipline levels.²⁷ Although these are important considerations, it is my contention the most critical contributing factors that led to the abuses were an unclear understanding of the ROE and the leadership's failure (brigade commander down) to properly train and monitor ROE. From the reports and investigations and interviews sited above, it is clear that a ROE policy was in place, but

²⁵ Ibid, xxviii

²⁶ Ibid, Summarized from the *ICRC Report, The Taguba Report; the DAIG report and interviews*, 383-557, 630-907.

²⁷ Ibid, Summarized from the *Taguba Report and the DAIG report and interviews*, 405-557, 630-907.

somewhere there was a serious disconnect: the ROE policy was either not adequate, was not followed, was not understood, and/or was not properly led. To complicate matters, the command and control relationship was confusing and disjointed. For example, in November 2003, the Commander of the 205th Military Intelligence (MI) Brigade (where the interrogators were from) was placed in charge of Abu Ghraib and all others performing missions at Abu Ghraib were placed under command of the 205th MI brigade for tactical control. This made a very awkward and unfamiliar relationship with a MI brigade in control of an inherently Military Police (MP) function.²⁸

Military Intelligence units conduct a wide variety of intelligence gathering missions on the battlefield and in Abu Ghraib were responsible for the interrogation of prisoners to ostensibly to gain intelligence. Military Police units can conduct a wide variety of missions on the battlefield that include maneuver support, area security, law enforcement and Prisoner of War camps. At Abu Ghraib, the military police were responsible for maintaining security both internally (keeping prisoners in) and externally (keeping unwanted out). Normally a prison camp is commanded by a MP officer with the rank of the officer determined by the size of the facility. Larger facilities would be commanded by higher ranks (colonel or lieutenant colonel) while smaller facilities could be commanded by captains or majors.

The operational commander in the Iraqi theater, Lieutenant General Sanchez, commander of Combined Joint Task Force Seven in Iraq, in October 2003 directed specific policy measures for interrogation and counter-resistance. His guidance gives specific “interrogation approaches” that were ROE on the specific measures to take while interrogating and handling prisoners. Allowed practices included techniques that were in

²⁸ Ibid, *The Taguba Report*, 434

accordance with appropriate law of land warfare principles, but included a couple of directives that could be too broadly interpreted. These include: “significantly increasing the fear level in a security internee” and “attacking or insulting the pride or ego of a security internee.”²⁹ This guidance, although well intended and scrutinized has some very serious flaws that may have directly led to the detainee abuse episode. For one, there was a conscious effort to not label the people detained in Iraq as “prisoners of war” because of the earlier strategic policy decisions made on status of detainees in Afghanistan and Guantanamo Bay. By not using the term prisoner of war, the soldiers on the ground conducting interrogation and guard missions were put in a position where they were dealing with prisoners, but they were not labeled “prisoners of war.” So, to the personnel conducting the mission, if the prisoners they had were not prisoners of war who are protected by the laws of armed conflict, then what kind of prisoners were they? In the volumes of documents relating to this incident, there is very little mention of specific training on this subject. As a matter of fact, following an investigation conducted on detention operations, the Major General recommended the commander of the 800th MP Brigade be relieved of her duties for a variety of issues that included, “failing to ensure that MP Soldiers in the 800th MP Brigade knew, understood, and adhered to the protections accorded to detainees in the Geneva Convention Relative to the Treatment of Prisoners of War.”³⁰ And, the investigating officer also recommended a General Officer Letter of Reprimand and further investigations against the commander of the 205th MI Bde for “failing to ensure that soldiers under his direct command were

²⁹ Ibid, *The Taguba Report*, 462

³⁰ Ibid, *The Taguba Report*, 439

properly trained in and followed the IROE.”³¹ In the end, it did not matter to the world what kind of category the United States put the prisoners in; what mattered was that the United States treated prisoners in a way that was inhumane and unjust.

Border Incident

A less conspicuous and not as well published incident took place on the Texas/Mexico border in the spring of 1997. A young goat herder tending to his family’s goat herd was shot and killed by a marine who was part of an observation post conducting drug interdiction missions. Normally, U.S. military are not used in the role of law enforcement in the continental United States because of possible violations of the Posse Comitatus Act. This act specifically prohibits the military from participating in law enforcement functions in the United States against U.S. citizens. “But in the 1980s, in response to a growing drug problem on the border, the law was loosened to allow military units to help the U.S. Border Patrol catch drug smugglers.”³² The marines were working under the operational control of an entity called Joint Task Force Six commanded by an Army Brigadier General. Joint Task Force Six was responsible for planning and coordinating the military support to the drug interdiction effort mostly focused on the Southwest border with Mexico. Military teams were sent in to conduct missions ranging from aerial support, engineering support and to soldiers on the ground conducting observation missions and assisting the border patrol and Drug Enforcement Agency with physically eradicating drug crops. The Commander of Joint Task Force Six, essentially an operational commander, was responsible for ensuring compliance with

³¹ Ibid, *The Tabuba Report*, 439; Note: IROE is Interrogation ROE.

³² S.C. Gwynne and Charlotte Faltermayer, “Border Skirmish,” *Time*, vol 150 issue 8 (25 August, 1997), 8

local, state, and federal laws as well as ensuring units assigned were properly trained and equipped for their specific mission. Additionally, he was charged with ensuring the appropriate unit was selected to conduct a specified mission. Included is the responsibility to ensure adequate ROE were prepared and disseminated to the units and soldiers conducting the varied missions. The ROE for the marines were clear for using lethal force: only to be used in self defense. As of August 1997 Joint Task Force Six had conducted 3,300 missions on the border with over 700 involving the kind of mission that the marines were conducting when the shooting occurred.³³ However, only the mission where the marine shot and killed the goat herder was the only documented mission where someone was killed by military personnel conducting missions in support of Joint Task Force Six.

This unfortunate incident started with the marines conducting a “routine surveillance mission” near the border of Mexico and the United States. They were watching for advance guards used by drug smugglers to warn of possible law enforcement in the way of the drug interdiction route. The 18 year old goat herder came close to the marine position and apparently fired a few shots from a rifle in the general direction of the marines. The marines did not immediately fire back, but instead stealthily followed the young man for some time. When the young man raised his weapon towards the marines again, the corporal in charge of the marine element aimed and fired his weapon. Apparently, the young man died immediately.³⁴ There was some doubt as to what the young man was firing at the first time he fired since the marines were apparently not visible and there was some question as to his motives and what he

³³ Ibid, 8

³⁴ Summary of articles from Gwynne and Faltermayer, *Border Skirmish*, 8 and *Shots in the Wilderness*, *Economist*, volume 344, Issue 8,031 (August 23, 1997), 20

saw when he raised his weapon towards the marines. There was much uproar in the small rural town where the 18 year old lived. Charges were filed against the marine who fired the shot, but the grand jury determined after two days of scrutinizing evidence that “he (marine charged with shooting) had followed the ROE in defending a third marine in the line of fire...exonerating him.”³⁵ This incident was very unfortunate indeed. No one wants to shoot and kill someone in such questionable circumstances. But, the ROE were clear and clearly stated that the marines had the right to self defense. Although some could argue they should have been better trained on law enforcement type UOF (rules governing how law enforcement officers can apply force in the conduct of their duties), in the end when a weapon that had been recently fired toward the marines was again raised towards them, a reasonable person could determine that exercising self defense in the form of using lethal force was warranted. The incident did change how the Joint Task Force Six commander could employ U.S. military forces in these operations by basically eliminating the kinds of missions the marines were conducting. In the strategic sense, it was bad news for the U.S. drug interdiction effort because “the drug-smugglers are thought to have stepped up their operations.”³⁶ But, the ROE were clear and the marines on the ground knew the rules of engagement and were exonerated.

Way Ahead for ROE at the Operational Level

Strategic guidelines are generally clear on UOF and ROE for most countries who are parties to the Geneva Conventions. Some countries have standing ROE like the United States and doctrinal UOF manuals like Canada. In the United States the

³⁵ *Shots in the Wilderness*, 20

³⁶ *Ibid*, 20

Chairman of the Joint Chiefs of Staff published a detailed standing ROE that gives a base document for the operational commander to create his ROE for the specific mission at hand.³⁷ These documents give the operational commander the start point from where he must create a consolidated order laying out to the tactical commander the “rules” by which the operation must be carried out. The critical task to be completed by the operational commander and his staff is the development and timely dissemination of the rules of engagement for the operation that is about to be undertaken. It does not matter if the task is to help restore order after a domestic hurricane or to control operations during a major tactical strike into an enemy tactical formation. The importance of creating clear and precise ROE is very clear. Not only are there very serious operational considerations and possible strategic impacts, but when the LOAC is concerned, “criminal liability will also accrue to any political or military superior who orders, colludes in, condones, or fails to take steps to prevent their commission or repress and punish actual offenders.”³⁸ Once the order is given to follow specific ROE, these rules will direct how the personnel working to support the operational commander’s intent will conduct their daily missions. Most importantly, the commander must ensure that a system is in place to monitor and lead the implementation of the ROE; he must be personally involved.

The very first step an operational commander should take for the ROE process is to determine to whom he will assign primary responsibility for ROE management. If the organization has a standing headquarters, this task should be permanently assigned, but if the organization is being created specifically for the mission, the operational commander

³⁷ Chairman, Joint Chiefs of Staff Instruction, CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces*, 1999

³⁸ Leslie C. Green, *Essays on the Modern Law Of War* (Transnational Publishers, Inc, New York, 1999), 327-328

must quickly determine who his point person will be for managing all aspects of the ROE process. In the end, the operational commander is ultimately responsible for this very critical task, but picking the right staff officer to help him successfully conduct this task is also very critical. Some commanders will place the legal advisor, lawyer or staff judge advocate in charge of developing and managing ROE. The legal advisor has very important duties with respect to ROE:

Duties include or have included dissemination of the law of war through manual preparation, and the establishment and maintenance of law-of-war education programs; enforcement of the law of war through the investigation and prosecution of violation of the law of war; administration of programs incidental to the law of war and combat operations; and the rendering of advice to commands on operational and tactical matters.³⁹

This option should certainly produce a ROE that is legally sound but may not provide the full operational impact intended. The operations section has the lead in other organizations. Placing the operations officer in charge of ROE puts ROE development right where the operation is being planned and would most likely produce a ROE geared towards completing missions in support of the operational plan. But, the operations section could easily get overburdened with other tasks and although it is very important, ROE could easily get placed on lower priority. Because the task of managing the ROE process is so essential to the mission success, the commander should place his deputy or chief of staff in charge of this task. While legal advisors and operations personnel should be part of the team that helps manage the ROE process, the deputy commander would be the level needed to help synchronize joint forces as well as coalition and interagency forces. Also, having the deputy commander managing ROE development and

³⁹ W.J. Fenrick, *Selected Readings in The Law of Armed Conflict* (DND Training Institute, Cornwall, Ont, 1986), 5

dissemination demonstrates how important the commander thinks the mission is to all involved and gives the level of authority that may be needed to ensure the task is successfully completed with multi-service and multi-coalition entities.

Once the lead is determined, a team must be identified and a plan established for how a ROE will be managed. In a standing headquarters, this team should be made up from permanently assigned personnel, with plans to add representatives from additional forces if needed. The team should consist of the following as a minimum: commander, deputy commander, legal advisor (ideally law of war expert), operations representative, personnel representative, intelligence representative, chaplain (faith specific to where operation will be conducted would be very helpful), service representatives from each service participating in the operation, coalition representatives from each country participating and specific interagency organizations. Although not necessarily needed in all stages of ROE development, subordinate commanders should be included in ROE discussions and it may be helpful to have liaisons from subordinate units attend ROE development sessions.

Once strategic leaders direct an operation to commence and an operational command is established to conduct this mission, the operational commander and his staff must determine exactly what the mission will be. Is this mission going to be conducted in an all out war setting or is it peacekeeping, peacemaking or humanitarian? Each of these missions will have specific ROE requirements and challenges so early determination of what specific mission will be accomplished is critical. Even though the likelihood of having a base document in the form of a standing ROE from the strategic level is high, “combatant commanders may augment these (US rules) as necessary to

reflect changing political and military policies, threats, and mission specifics to their AOR.”⁴⁰ ROE for war time operations are significantly different from operations other than war and the ROE must be mission specific. And, even if one ROE is prepared, the likelihood of changing missions (war to peacekeeping) is very high and should be anticipated.

Once the mission is defined, the scope of involvement needs to be established. ROE covers not only ground forces, but will have to be developed for air and naval forces if they are participating. Who and what kind of support coalition forces will bring to the mission is also an important factor. There may be some countries participating that do not have standing rules of engagement or they may have rules that differ significantly from what the operational commander is accustomed to. All will have to be sorted through to ensure that when the mission is being accomplished everyone knows the rules by which they are supposed to conduct themselves.

Next, the ROE group should review all available guidelines and if working in a coalition, ensure a good basic knowledge of each country’s UOF/ROE policies and procedures. Generally, there will be a good base ROE document available especially if the operation is sponsored by the United Nations, NATO, United States or Canada. This base document will include general guidelines for ROE and broadly accepted principles for ROE. For example, almost all base ROEs begin or have as an important point, the basic right of self defense. Although this may seem intuitive, it may not necessarily be clear to the person on the ground trying to make a split second decision during a volatile situation. This is precisely why ROE are so critical to successful mission accomplishment. But, as was seen in the Abu Ghraib incident, there may be a lot of legal

⁴⁰ *Standing Rules of Engagement for U.S. Forces*, 2

wrangling to determine very specific terms by which the rules of engagement will apply. It may take months to get a definitive legal opinion from the strategic level, so the operational commander is going to have to ensure some type of ROE is in place in the interim.

When dealing with a coalition, every country is going to bring to the organization a preconceived notion on how their forces will be allowed to fight or be used in the operation. This may include limitations for a specific force in the coalition that cut into the planned use of these forces and how ROE can be applied. This is where the commander will have to aggressively coordinate with nations in support of the operation either personally or with a trusted liaison. In the end, there is a good chance that not all countries supporting an operation will be on the exact same ROE. The operational commander and his staff will have to maximize opportunities presented by this challenge but must always be cognizant of the fact that forces under the operational commander's purview may work under different rules of engagement.

At this point, a solid baseline ROE should be developing. The commander, if already not intimately involved, should, along with all participants, be thoroughly briefed. Once the commander approves the ROE, he should immediately promulgate the ROE in the form of an order. Subordinate commanders should then include ROE training in any and all training activities geared toward the upcoming operations. At this time, ROE cards can be developed and distributed to subordinate commanders, but caution should be taken to not publish these cards too early because the ROE could change. This could leave the force with multiple ROE cards that could lead to confusion. Also, care must be taken to ensure the ROE cards are precise and do not create a risk adverse

mentality throughout the command; this can happen very easily if too much legalese and false or misleading information is included.⁴¹

The commander, subordinate commanders, the ROE lead and all other members of the ROE team will then monitor ROE implementation and help the commander ensure ROE orders are current and appropriate. “However detailed the law of war training directive may be, that program will fail or be marginal in its application absent adequate command attention to and supervision of its implementation.”⁴² If a change is deemed necessary, the team should reconvene and determine the way ahead. Only the commander can approve changes to the ROE and changes should only be made when absolutely necessary or when the mission significantly changes (an example would be offensive war to peacekeeping).

CONCLUSION

Commanders at the operational level have immense responsibilities and must manage countless tasks especially in the initial stages of operational planning and development. Although not thoroughly trained on ROE development at the operational level, this is a very critical task that must be completed quickly and efficiently. It is so important that the success of the entire operation may rest on how well the ROE were developed, promulgated and administered.

⁴¹ David G. Bolgiano, James C. Larsen and Trish Pullar, Time to Tell our Kids It’s Okay to Shoot, Proceedings of the United States Naval Institute (vol 131, issue 7, Jul 2005), 12 Summarized discussion of how ROE cards can create risk adverse mentality. At the time of the article, David Bolgiano was the Deputy Staff Judge Advocate of the 175th Wing, Maryland Air NG, James Larsen was a LTC assigned as an operations officer in Special Operations Command, and Trish Pullar was the Law Office Manager of the 105th Airlift Wing of the NY ANG.

⁴² Fenrick, 28

The Abu Ghraib incident makes it very clear that even though ROE are transmitted to the tactical level, it is critical that commanders ensure the ROE are provided to the lowest level and checked. It is also clear that these rules must be very clear even to the lowest ranking soldier, airman, marine or civilian on the battlefield. ROE are such a critical portion of an operation that they must be thoroughly trained, checked and rechecked. The entire chain of command from the operational commander down must keep constant vigilance throughout the entire operation and immediately make changes to the ROE if needed.

The incident on the border shows how, even in the worst of situations, proper ROE development, training and implementation will ensure the mission is protected and the personnel conducting missions are legally and morally sound with their actions. Killing a person during a mission is a very traumatic and stressful situation, but one can only imagine how much worse it could have been for all involved (to include the operational commander) if proper ROE were not in place or the marines on the ground used the ROE improperly.

Creating and managing ROE that are appropriate for the operation at hand is a very critical and difficult task. Ensuring a good team is in place to develop and monitor ROE makes this task much more manageable. With a systematic approach to managing ROE, the commander can provide orders to the forces at the tactical level quickly and efficiently. This will significantly facilitate successful mission accomplishment.

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