

Joint Forces Staff College
Joint Advanced Warfighting School



Preparing the strategic sergeant for war in a flat world: Challenges in the application of ethics and the Rules of Engagement (ROE) in joint / multinational / multicultural operations

by

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The contents of this paper reflect my own personal views and are not necessarily endorsed by the Joint Forces Staff College or the Department of Defense.

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Abstract

PREPARING THE STRATEGIC SERGEANT FOR WAR IN A FLAT WORLD:
CHALLENGES IN THE APPLICATION OF ETHICS AND THE RULES OF
ENGAGEMENT (ROE) IN JOINT / MULTINATIONAL / MULTICULTURAL
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The strategic impact of decisions made, and actions taken, by junior leaders in Iraq and Afghanistan are well documented. In light of these impacts senior leaders continue to struggle with strategic communications and training required to insure Soldiers on today's battlefield share a common set of values and understand how to apply them in combat. Junior leaders are faced with increasing conflict between the moral standards of multi-cultural operations and a litany of guidance that is not easy to assimilate or understand. The answer to the research question "Does the US Military insure the "Strategic Sergeant" is prepared to make value based ethical and moral decisions in a joint, multi-national and multi-cultural environment?" is a resounding "somewhat." The research documented in this thesis clearly shows the military has a system and a keen interest in improving how they train "Strategic Sergeants" to correctly determine what they should do as well as what they can do in combat. In this light, leaders throughout the Department of Defense must continue to improve the clarity of the Laws of War, the regulations that govern military actions in combat, and the training provided to the "Strategic Sergeant" who faces the ambiguity of combat in front of a global audience.

Dedication

Dedicated to the memory of Sergeant Wilsun Mock, USA

Killed in Action – 22 October 2006

Sergeant Mock was the epitome of the professional non-commissioned officer who lived by the motto he had tattooed on his arms: strength and honor. A twenty-three year old sergeant serving his second tour in Iraq, Sergeant Mock loved life, loved people, and loved his fellow soldiers. In another life, he would have been a missionary; but the world needed warriors, and Sergeant Mock was there to answer the call. A warrior spirit with a kindred heart, he fought from the moral high ground with the understanding that he and his fellow Soldiers were all that stood between freedom and despair for a generation of Iraqis. Strength and Honor Sergeant Mock!

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Understanding the linkages between the Law of War, US treaty policy, the rules of engagement, and escalation of force is clearly a difficult process. This study would not have been possible without the professional assistance of Major Joe Raterman, a Judge Advocate General officer who served as the Senior Brigade Legal Observer Controller at the Joint Multinational Readiness Center in Germany in 2006. Major Raterman's passion for serving his country and fellow Soldiers was clearly evident in the many spirited discussions we had over the ideals that formed the basis for this thesis.

I'd also like to acknowledge Vianne, my wife of 19 years, and my sons Ian and Tanner for their constant reminder that every Soldier deserves to return home from war with their head held high and that every family deserves to see their loved ones fight from the moral high ground for a cause that is worthy of their sacrifice.

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Chapter I

Introduction

In periods of emergency, and especially in combat, there will always be a temptation to override legal and moral norms for morally good ends. Many in Operations Enduring Freedom and Iraqi Freedom are not well prepared by their experience, education and training to resolve such ethical problems.¹

-Final Report of the Independent Panel to Review DOD Detention Operations, August 2004

In many cases, the individual Marine will be the most conspicuous symbol of American foreign policy and will potentially influence not only the immediate tactical situation, but the operational and strategic levels as well. His actions, therefore, will directly impact the outcome of the larger operation; and he will become...the *Strategic Corporal*.²

-General Charles Krulak

Nowhere is the flattening of the world described by Thomas Friedman in his 2005 book, "The World is Flat" more apparent than on the battlefields of the Global War on Terror (GWOT). On these battlefields, the formerly anonymous acts of violence between protagonists that were fodder for stories and movies made long after the fights were over are now relayed in real-time, straight to the homes and minds of a global population. What was once a sterile environment limited to combatants who avoided urban combat as much as possible, has given way to an asymmetric battlefield fought in increasingly urbanized areas, amongst and sometimes by the civilian populations we are expected to protect. Global media penetration has further changed the face of the battlefield. Gone are the restrictions faced by the relatively few embedded reporters given access to the battlefields of the early 20th century. Today, anyone with a cell phone camera and proximity to an event can attain near immediate global access through global web portals such as "You-Tube and MySpace."³ Ideology has equally transformed the battlefield and

further confused how we relate right and wrong. Gone is the clear definition of right and wrong as two protagonists face off on a sterile battlefield. Today, we fight amongst multiple protagonists, some opposed to our efforts, while others are opposed to each other, changing sides in a fight to further their own goals. In an August 1999 article for Marine Magazine, General Charles Krulak aptly described the environment.

The rapid diffusion of technology, the growth of a multitude of transnational factors, and the consequences of increasing globalization and economic interdependence, have coalesced to create national security challenges remarkable for their complexity. By 2020, eighty-five percent of the world's inhabitants will be crowded into coastal cities -- cities generally lacking the infrastructure required to support their burgeoning populations. Under these conditions, long simmering ethnic, nationalist, and economic tensions will explode and increase the potential of crises requiring U.S. intervention. Compounding the challenges posed by this growing global instability will be the emergence of an increasingly complex and lethal battlefield. The widespread availability of sophisticated weapons and equipment will "level the playing field" and negate our traditional technological superiority. The lines separating the levels of war, and distinguishing combatant from "non-combatant," will blur, and adversaries, confounded by our "conventional" superiority, will resort to asymmetrical means to redress the imbalance. Further complicating the situation will be the ubiquitous media whose presence will mean that all future conflicts will be acted out before an international audience.⁴

At the nexus of this increasingly urbanized population, global media penetration and a worldwide clash of ideologies stands the "Strategic Sergeant": a young Soldier, Sailor or Marine whose decisions made in minutes and seconds, have the potential for profound impact on our Strategic Goals that will last for months and years. Further compounding the difficulties in this environment, we have left the days of fighting with a coalition of English-speaking, like-minded armies behind. Today we execute combined multi-national operations at the platoon and squad level where language, culture, religion and ethics are seldom common amongst the patrol members. For these Soldiers and the leaders who commit them to battle, gaining an understanding of the confluence of the

Law of Land Warfare, the Rules of Engagement, and commander's intent as they relate to ethical decisions made in the heat of battle is imperative.

This thesis examines the challenges in understanding the ethical and moral dilemmas our Strategic Sergeants encounter on a battlefield that is increasingly joint, multinational and multicultural and then in preparing those same key leaders to face those challenges. Specifically, I will focus on answering the question, what are the Law of War challenges our "Strategic Sergeants" and leaders face on today's asymmetrical battlefield and what has the military done to prepare those key Sergeants to face them? A result of this analysis will provide recommendations for improving this training to better position our "strategic sergeants" to have a positive impact on the battlefield.

In chapter II, this thesis provides a preliminary exploration of the connections between the historical basis for the Law of War, International Agreements, U.S. Laws and the current unclassified Rules of Engagement for the Global War on Terrorism. This exploration provides the background necessary to understand the basis for ethical challenges on the battlefield and the rules that govern the adjudication of those challenges. Today's Rules of Engagement are largely based upon the Law of War, international and internal political factors, and operational factors. The Laws of Land Warfare and the Rules of Engagement provide Soldiers with the boundaries of what actions are legally permissible or what can be done. However, theory is often open to interpretation when faced with reality. It is the commander's role to provide this interpretation in terms of commander's intent so that the leaders who carry out the missions understand their boundaries for making timely, judicious decisions for the application of force. The commander's intent should provide, within the boundaries of

what are legally permissible actions, guidance on what *should* be done when faced with the ambiguity of reality. An understanding of how these rules are connected to the theory of war and international law is imperative to understanding the difficulties faced in making ethical decisions during combat in a flat world.

In chapter III, this thesis provides an analysis of historical examples of ethical challenges faced by leaders and Soldiers culled from the battlefields of Operations Iraqi Freedom and Enduring Freedom. While there are thousands of potential studies worth reviewing, those used in this study highlight the breadth and scope of the ethical challenges faced by Soldiers and leaders on a daily basis. These events also highlight the potential impact of these challenges and the impact of the “Strategic Sergeant’s” decisions on strategic operations. Time and globalization will not ease the situation, but as events have shown, they will in fact make the world even more difficult to operate in. In a 1999 article, General Krulak had the following to say about small unit marine leaders operating in this environment.

...they will be asked to deal with a bewildering array of challenges and threats. In order to succeed under such demanding conditions they will require unwavering maturity, judgment, and strength of character. Most importantly, these missions will require them to confidently make well-reasoned and *independent* decisions under extreme stress -- decisions that will likely be subject to the harsh scrutiny of both the media and the court of public opinion.⁵

In the past several years of the Global War on Terror, General Krulak’s words have proved to be prophetic, not just for Marines, but also for anyone in or out of uniform supporting operations in Afghanistan and Iraq. In fact, the scrutiny the military faces is indeed harsh, and includes not only that of the media and press, but also that of military peers and leaders across the very same organizations that are under external scrutiny. It

is in this context that we explore the Independent Panels' statement, "In periods of emergency, and especially in combat, there will always be a temptation to override legal and moral norms for morally good ends,"⁶ to determine how normally well trained and "good intentioned" leaders and units can be led astray.

Chapter IV uses an Army Brigade Combat Team (BCT) as a vehicle to describe how the Law of War, ethics, and Rules of Engagement are taught in an organization preparing to deploy for combat operations in support of the Global War on Terrorism. While an Army Brigade is chosen for this example, the training, methodology and execution are virtually the same for combat units deploying from any service. Commanders are obligated to their subordinates to provide comprehensive and continuous training programs focused on understanding the legal definitions of the law of land warfare and the specific rules of engagement for the area they will operate in. Building on a foundation of legal definitions, commanders must then translate those terms into values that will guide their subordinates' actions throughout the depth of a complex battlefield. This training should result in a clear understanding throughout an organization of the answers to two basic questions: What can be done legally? And, what should be done to further the long term goals of the mission? The process of educating Soldiers further assists leaders in establishing a core set of values in their units that will guide the application of force regardless of the situations they find themselves in. This process, coupled with constant interaction between leaders and their subordinates helps commanders anticipate what their subordinates are *likely* to do under fire. How the military adjusts to answer these questions will have significant impacts on how the "Strategic Sergeant" performs his duties on a world stage.

The final chapter of this thesis, in three parts, summarizes the challenges faced by the “Strategic Sergeant” on today’s asymmetrical battlefield and makes recommendations for countering the potential moral conflicts he will face. The first part summarizes challenges in terms of understanding legal limits and responsibilities under the rule of law in a multi-national and multi-cultural environment. The second part summarizes the broad difficulties our “Strategic Sergeants” face in making decisions in ever more ambiguous situations while operating at increased distances from their chain of command. Finally, the third part summarizes the challenges faced by leaders at every level in training themselves and their subordinates to communicate guidance for the application of the Rules of Engagement as a basis for making moral, ethical decisions that they can live with after the war is over. As events have shown, the importance and impact of the “Strategic Sergeant” cannot be underestimated. His decisions, actions and performance in front of a global audience have the potential to change the face of conflict. With this in mind, it is imperative that every military service-member deploy with the knowledge and training required to execute their duties and make decisions that are based on the Law of War and the Rules of Engagement. It is equally imperative that leaders at every level meet their obligations to insure that these same service-members enter the fight with clear commander’s intent that provides a common set of values for making fast-paced, ethical decisions in a multi-cultural world. In the end, while our goal is to win the war we must insure our most precious national asset, “the Strategic Sergeant” returns from the battlefield knowing that his actions will withstand the scrutiny of his peers, family and a global audience long after the last fight is over.

¹ (Independent panel to Review DOD Detention Operations 2004)

² (Krulak 1999)

³ A July 2006 USA Today article indicates that in June 2006, 2.5 billion videos were watched on YouTube and that 65,000 were uploaded daily.

⁴ (Krulak 1999)

⁵ (Krulak 1999)

⁶ (Independent panel to Review DOD Detention Operations 2004)

Chapter II

Doctrinal Review

We fear that resort to force, under these circumstances, would not meet the strict conditions in Catholic teaching for overriding the strong presumption against the use of military force. Of particular concern are the traditional just war criteria of just cause, right authority, probability of success, proportionality and noncombatant immunity.

- Bishop Wilton D. Gregory, United States Conference of Catholic Bishops, Office of Social Development & World Peace, Letter to President Bush on Iraq, September 13, 2002

The war on terror is a new type of war not envisioned when the Geneva Conventions were negotiated and signed. We should look at all international documents to see whether they are compatible with this moment in history.

-Pierre-Richard Prosper, US Ambassador for War Crimes Issues

No discourse on the challenges of forming and applying the current U.S. Rules of Engagement should begin without a clear understanding of the laws that form the basis for them. The confluence of the Law of War, International Agreements, U.S. Laws, current unclassified Rules of Engagement for the Global War on Terrorism, and even U.S. government policy decisions, have a profound impact on how Soldiers view the validity of their missions and the orders they follow. This Chapter provides the background necessary to understand the basis for ethical challenges on the battlefield and the rules that govern their adjudication.

Today's Rules of Engagement are largely based upon the Law of War, international and internal political factors (policy decisions), and operational factors. The Laws of Land Warfare and the Rules of Engagement, reinforced by policy decisions and operational orders, provide Soldiers with the boundaries of what actions are legally

permissible or what can be done. However, these decisions and directives are often open to interpretation when the person responsible for executing them is faced with reality. It is in this case that commander's must provide their interpretation in terms of commander's intent so that the leaders who carry out the missions are armed with boundaries for making timely, judicious decisions in the application of force. The commander's intent should provide, within the boundaries of what are legally permissible actions, guidance on what should be done when faced with the ambiguity of reality. An understanding of how these rules are connected to the theory of war and international law is imperative to understanding the difficulties faced in making decisions on an asymmetric battlefield in a flat world. The chart below best indicates the relationships between theory, law and intent.

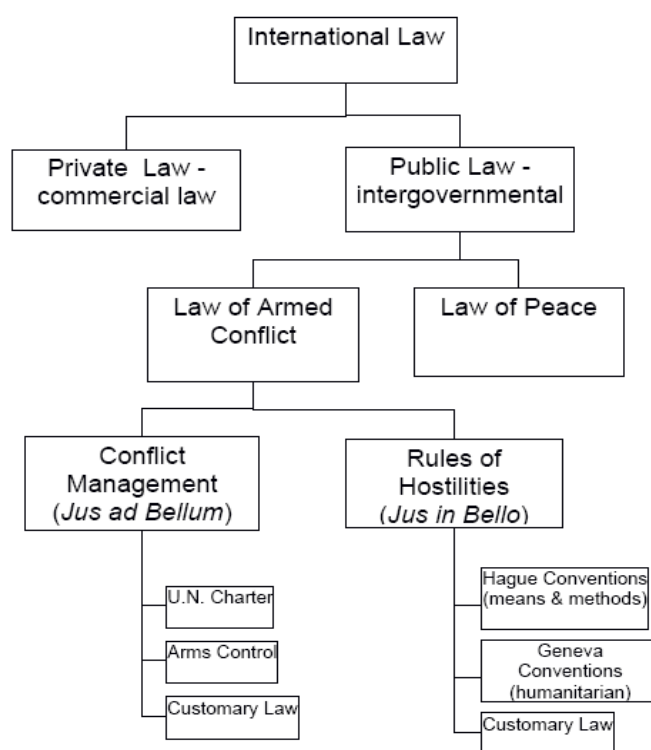


Figure 1 - Hierarchy of the Law of War¹

To aid in discovering the connections and potential conflicts between theory, policy, law doctrine and intent, this chapter is divided into four sections. Section one provides a review of the legal theory as it applies to what is recognized by the U.S. Government as the Law of War. Section two provides a review of U.S. policy and laws. Section three provides a review of current U.S. military doctrine to include the current unclassified rules of engagement for the Global War on Terrorism. Finally, section four describes the modern requirements for commanders to deliver their intent to subordinates in order to fill in the gaps between what is written and what actually occurs in a rapidly changing environment.

The Theory of Armed Conflict (Law of War)

The legal definition of “War” has been hotly contested for centuries. Today, the argument continues. Historically, only conflicts meeting the four elements test for “war” triggered Law of War application. This meant more simply that there had to be a contention between at least two nations, where armed force was employed with intent to overwhelm. Eventually, a number of states claimed the law was insufficient to apply boundaries to all instances of armed conflict. In that light and as time, warfare and civilization progressed; the applicability of the Law of War became more dependent on individual classifications of the nature of war, rather than a well-substantiated set of rules. Rather than cast aside the legal theory developed centuries earlier, the international community’s response to this progression led to the declaration that, “a state of war is no longer required to trigger the Law of War.”² Further cementing the declaration, later international conventions would hold that the Law of War was applicable to any

international armed conflict; further clarifying that, “Any difference arising between two States and leading to the intervention of armed forces is an armed conflict.”³

Modern theory on just war and its subsequent discussions on what justifies war are based on western religious thought. Beginning with Augustine of Hippo (354-430), a series of religious scholars gave thought and created a basis for the discussion on the environment of armed conflict. Augustine, widely credited as the first to document his thoughts, generally despised the loss of life and destruction that were a result of war. Despite this, he still felt that “just war” might be necessary and that it might be preferable to an ‘unjust’ peace. St. Thomas Aquinas (c. 1225-74) made a contribution to the effort in the 13th century by outlining the three criteria of just war – right authority (a sovereign government, rather than individuals), just cause (to avenge wrongs or to restore what was unjustly seized) and right intention (the advancement of good or the avoidance of evil). These criterion provided addition clarity to further evolve Augustine’s concepts of “just war.” Following Aquinas, a host of protestant and catholic theorists upheld the theory of just war and continued to contribute to its clarity. Today these just war theories, having been generally separated from their religious roots, are encoded in the international laws governing armed conflict as well as in U.S. statute and military doctrine.

The result of 1600 years of evolving tradition is a fairly complex set of criteria that govern both the moral justifications for waging war (*jus ad bellum*) and moral conduct once engaged in war (*jus in bello*). While just war theorists generally upheld a common set of criteria for waging “just war,” the use of the criteria varied widely in terms of interpretation and applicability. The modern interpretation of Saint Augustine’s theory of *Jus ad Bellum* focuses on the following key points.⁴

a. *Legitimate authority.* Private individuals and groups are not permitted to take up arms against others; however justified their cause may appear. Only governments—those who have been entrusted with the public good—may wage war, and they must do it openly and legally.

b. *Just cause.* A government may wage war in self-defense, in defense of another nation, to protect innocents or to regain something wrongfully taken. The desire for personal glory or revenge, or to impose tyrannical rule is never an acceptable cause for waging war.

c. *Right intention.* The ultimate end of a government in waging war must be to establish peace, rather than to use a "just war" as a pretext for its own gain.

d. *Last resort.* A governing authority must reasonably exhaust all other diplomatic and non-military options for securing peace before resorting to force.

e. *Reasonable chance of success.* A government may not resort to war unless its prospects for success are good. In this way, lives will not be needlessly wasted in the pursuit of a hopeless cause.

f. *Proportionality.* A government must respond to aggression with force only when the effects of its defensive actions do not exceed the damage done by the aggression itself.

While *Jus ad Bellum* seeks to manage how states go to war, *Jus in Bello* is the law governing the actions of states once conflict has started. The following key points provide the basis for the application of *Jus in Bello* in the Law of War.

a. *Noncombatant immunity*. An authority waging war is morally obligated to seek to discriminate between combatants and noncombatants. While civilians unfortunately may sometimes come in harm's way, a government may never deliberately target them.

b. *Proportionate means*. This criterion pertains to specific tactics of warfare and seeks to restrict unnecessary use of force. It is intended to ensure that the military means used to achieve certain goals and goods are commensurate with their value, particularly when compared to the loss of life and destruction that could also occur.

Even after centuries of development, the principles of just war continue to undergo critical analysis and are subject to great debate. Complications arising from globalization, the militancy of ethnic, religious and non-state actors, and our own political environment continue to make these debates a contentious process. For instance, the discussion of preemptive strikes outlined in the 2006 U.S. National Security Strategy are argued to be in violation of the principles of Just War by one side and as a pragmatic approach to modern threats by the other. Hardliners, like Michael Walter will argue that no action taken is ever really taken as a last resort: assuming that one can always make one more effort to avoid war⁵. However, his arguments begs the question at what point, then, does a government determine that it has indeed exhausted all reasonable diplomatic solutions and must use force? New military developments, advanced forms of weaponry, as well as changing tactics of contemporary warfare also influence applications of Just War thought. For instance, the technological advancements, such as precision-guided munitions like "smart bombs" that ensure greater accuracy while reducing the chances of civilian damage, have also have bred efforts by protagonists to use human shields as a means to counter their employment. In light of this modern evolution of warfare, and the

continued contentious argument on Just War Theory, it is imperative that national and military leaders alike are able to base their plans and operations on morally acceptable ideals, while understanding that their actions are subject to interpretation by a diverse population. To do this successfully, our military must conduct itself in ways compatible with American national values. If individual soldiers and officers are to be able to see themselves and their activities as morally acceptable, they must be able to understand the moral structure of just conduct in war. Unfortunately, codifying what are considered morally acceptable activities in an asymmetric environment is a cumbersome process that is intertwined in U.S. Statute, policy, doctrine and moral values.

US Policy and Law

For national leaders, the principles of *Jus ad Bellum* and *Jus in Bello* are interpreted through a series of treaties and laws that have become the foundation for the *Law of War* (LOW). The LOW is the “customary and treaty law applicable to the conduct of warfare and to relationships between belligerents and neutral states.”⁶ For military leaders, the *LOW* states that its purpose is to “provide authoritative guidance to military personnel on the customary and treaty law applicable to the conduct of warfare on land and to relationships between belligerents.”⁷ As it applies to military personnel, the LOW includes all international law for the conduct of hostilities that are binding on the United States to include all treaties and international agreements to which the United States is party.⁸ The main proponent documentation for LOW as it applies to military personnel resides in DOD Directive 5100.77 and Army Field Manual 27-10 (FM 27-10).

Yet a supplement to FM 27-10 of pertinent agreements, policies and other statements that interpret, instruct or clarify the application of the LOW includes 42 separate documents.

From FM 27-10, The Law of War, one can ascertain a list of standards that are most applicable to the Law of War. While the following list is not exhaustive, it does provide an adequate summary of the rules based on the four main principles of Just War Theory: Distinction, Proportionality, Unnecessary Suffering, and Military Necessity. Collectively, these rules provide a basic LOW foundation that can be applied in almost any U.S. military operation in accordance with DOD Directive 5100.77 and in fact form the basis for the CJSC Standing rules of Engagement (SROE). The following are the key points.

a. *Fight only combatants.* Any combatant belonging to a declared hostile force may be engaged with force at any time. An unprivileged belligerent is an individual participating in hostilities who does not meet the LOW criteria of a lawful combatant. An unprivileged belligerent, though not a part of a declared hostile force, can be legitimately targeted, as a result of their hostile conduct. An unprivileged belligerent is not entitled to POW status if captured and does not enjoy “combatant immunity.”

Embedded in this first rule is the basis for the right of self defense. While the inherent right of self defense is not a LOW principle, the principle of military necessity underlies the justification for using force. Military necessity justifies those measures not forbidden by international law which are indispensable for securing the complete submission of the enemy as soon as possible.⁹ Within this construct, it is imperative to understand the definition of two key definitions that are important in gaining an

understanding of the terms used in issuing commander's intent for military operations.

The first is the definition of a *hostile act*. In terms of the LOW a hostile act is:¹⁰

An attack or other use of force against the United States, U.S. forces, and, in certain circumstances, U.S. nationals, their property, U.S. commercial assets, and/or other designated non-U.S. forces, foreign nationals and their property. It is also force used directly to preclude or impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel and vital U.S. Government property. A hostile act triggers the right to use *proportional force* in self defense to deter, neutralize, or destroy the threat.

The second key definition is of *Hostile Intent*. Hostile intent is defined in the LOW as the following:¹¹

Hostile Intent is the threat of imminent use of force against the United States, U.S. forces, or other designated persons and property. It is also the threat of force used directly to preclude or impede the mission and/or duties of U.S. forces, including the recovery of U.S. personnel and vital U.S. Government property. When hostile intent is present, the right exists to use *proportional force* in self defense to deter, neutralize, or destroy the threat.

b. *Treat humanely all who surrender or are captured*. One of the most basic principles of the LOW is to protect and safeguard people who are under military control to include prisoners of war, detainees, internees and other civilians. Providing human treatment to prisoners serves the double purpose of giving the soldiers of an opposing force incentive to surrender, while increasing the likelihood that captured friendly soldiers will be treated in the same manner. This is also a basic requirement of Common Article 3 of the Geneva Conventions to protect detained personnel from violence, intimidation, insults, and public curiosity.¹² The protection and treatment rights, as well as the obligation to treat captives humanely, begin at the moment they are taken into captivity.¹³ This rule is further extended to include all Department of Defense (DOD) civilian employees, contractor personnel and all federal employees and civilian contractor personnel performing missions, such as handling and interrogations of DOD detained

personnel at DOD facilities. This includes, but is not limited to, U.S. Treaty obligations, the Military Extraterritorial Jurisdiction Act (MEJA) as amended by the National Defense Authorization Act for Fiscal Year 2005¹⁴ and the War Crimes Act, 18 U.S.C. 2441 (2000).¹⁵ Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men.¹⁶

c. Do not kill or torture detained personnel. While the rule itself seems to be fairly straightforward, the arguments over what entails torture continue even six years after the initial stories about the Guantanamo Bay interrogation practices began.

d. Collect and care for the wounded. Individuals who are sick or wounded, and who cease to fight, shall be treated humanely, without any adverse distinction founded on race, nationality, religion, sex, or any other similar criteria.¹⁷ They are to be respected and protected in all circumstances.¹⁸ How quickly this must happen depends on the military situation at the time.

e. Do not attack protected persons and protected areas. The LOW generally prohibits the intentional targeting of protected persons, such as civilians and medical/religious personnel, under any circumstances. Civilian objects, such as hospitals, churches and mosques, are protected from intentional attack or destruction, so long as they are not being used for military purposes, or as long as there is no military necessity for their destruction or seizure. The LOW permits destruction of civilian objects if military circumstances necessitate such destruction, or if the civilian object has become a military objective.¹⁹ The circumstances justifying destruction of civilian objects are

those of military necessity, based upon information reasonably available to the commander at the time of his decision.²⁰

f. *Destroy no more than the mission requires.* Don't target or attack what isn't required to accomplish a mission or achieve a military objective. The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.²¹ Military objectives— i.e., combatants, and those objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage—are permissible objects of attack (including bombardment). Military objectives include, for example, factories producing munitions and military supplies, military camps, warehouses storing munitions and military supplies, ports and railroads being used for the transportation of military supplies, and other places that are for the accommodation of troops or the support of military operations.²²

g. *Treat all civilians humanely.* Civilians cannot be treated with adverse distinction based race, religion, or sex. Civilians cannot be taken hostage, nor treated in a degrading manner. Finally, violence to life or person is not permitted and combatants are obligated to care for the wounded and sick. Civilians are to be respected and are not to be made the subject of attack. However, this protection is not absolute and requires civilians to abstain from all hostile acts. Hostile acts are those acts intended to cause actual harm to the personnel and/or equipment of the armed forces. These protections are reflected in what is known as Common Article 3 of the 1949 Geneva Conventions. It is DOD Policy to provide these “minimum” protections in all conflicts, however characterized.²³

h. *Respect private property and possessions.* In respect to civilian property, it is not to be retained unless it is contraband. Likewise, the taking of personal property for immediate military necessity is only permitted in emergency; a case in which a receipt must be provided, when possible. Finally, pillaging is not permitted in any circumstances, regardless of location.²⁴

i. *Prevent LOW violations*

j. *Report LOW violations*

In the end, it is Department of Defense (DOD) policy to apply the principles and spirit of the LOW during all operations, whether international armed conflict, internal armed conflict, or military operations other than war (MOOTW).²⁵ However, DOD policy is not sufficient to completely cover every possible instance of conflict. To further define the rules and to insure members of the military are afforded a set of boundaries to operate in. DOD has further promulgated a process for developing Rules of Engagement (ROE) that are tailored for each operation.

Rules of Engagement

Rules of Engagement (ROE) are the primary tools commanders use for controlling the use of force in armed conflict. From the discussion in the previous two sections, one can see that the legal basis for creating ROE, including customary and conventional law principles regarding the right of self-defense and the laws of war, are varied and complex enough by themselves. However, they are not the only factors that are considered in formulating ROE. Political objectives and limitations, as well as

military restrictions are also important elements in the design of operational ROE. Below is an overview of basic ROE concepts extracted from Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, *Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces*, and review the ROE process.

ROE are designed to perform three functions: First, to provide guidance from the President and Secretary of Defense, as well as subordinate commanders, to *deployed units* on the use of force; second, to act as a control mechanism for the transition from peacetime to combat operations; third, to provide a mechanism to facilitate planning of military operations. As mentioned above, these ROE provide a framework for the application of the theory of Just War. In doing so, the ROE may also include political goals and limits as well as other mission requirements. In this construct, ROE can be divided into three distinct categories in terms of their purpose and objectives.

1. *Political Purposes.* ROE ensure that national policies and objectives are reflected in the actions of commanders in the field, particularly under circumstances in which communication with higher authority is not possible. To meet political objectives ROE may restrict the engagement of certain targets to manipulate world opinion, or that of a coalition partner, in a favorable way. ROE may also be designed that limit the escalation of hostile actions, or simply to place boundaries on where hostile actions may take place. The effects of international and domestic public opinion are obviously a chief concern of the political purpose in forging ROE. Also of concern are the effects of host nation laws and the application of Status of Forces Agreements (SOFA), to include those of countries bordering the areas of conflict.

2. *Military Purposes*. ROE provide acceptable limits within which leaders must operate while performing their missions. They may establish a limit on operations, ensuring that U.S. actions do not trigger undesired escalation into other areas or countries. Limits on cross boundary operations from Afghanistan into Pakistan are an excellent example of such boundaries. ROE may restrict or limit a commander's ability to apply certain weapons systems or effects in order to further control the escalation of violence. ROE may also be used to reemphasize the scope of a mission. Units deployed overseas for training exercises may be limited to use of force only in self-defense or even limited in where they can go, reinforcing the *training* rather than *combat* nature of the mission.

3. *Legal Purposes*. ROE are written to be consistent with both domestic and international law. In some cases, they may be restrictive in nature, actually placing limits on commanders that exceed legal requirements. In many cases, these limits are derived from international agreements authorizing operations. For example, the U.N. Security Council Resolution (UNSCR), *e.g.*, UNSCR 940 in Haiti and UNSCR 1031 in Bosnia detailed the scope of force authorized to accomplish the purpose of the missions they authorized.

As mentioned above, the first form of ROE one encounters in military operations is the CJCS Standing Rules of Engagement (SROE). The most current SROE went into effect on 13 June 2005, providing and reinforcing implementation guidance on the inherent right of self-defense and the application of force for mission accomplishment. These ROE are designed to provide a common template for development and implementation of ROE for the full range of operations, from peace to war. Although the

SROE are released by the CJCS, they are approved by the Secretary of Defense. While subordinate commanders may issue further restrictive ROE, they must notify the Secretary of Defense when doing so.

The SROE apply to all military operations and contingencies. Within U.S. territory, the SROE apply to air and maritime homeland defense missions. Included in the new SROE are Standing Rules for the Use of Force (SRUF), which apply to civil support and homeland defense missions within U.S. territory and to DoD personnel performing law enforcement functions at all DoD installations. The SRUF cancels CJCSI 3121.02, Rules on the Use of Force by DoD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States, and the domestic civil disturbance ROE found in Operation Garden Plot. The SRUF also supersedes DoD Directive 5210.56, Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties.²⁶

As stated in CJCSI 3121.01B the purpose of the SROE is twofold. First, they provide implementation guidance on the application of force for mission accomplishment. Their second purpose is to ensure the proper exercise of the inherent right of self-defense. The SROE outline the parameters of the inherent right of self-defense in Enclosure A of the document. The rest of the document establishes rules and procedures for implementing supplemental ROE. CJCSI 3121.01B is divided as follows:

1. Enclosure A (Standing Rules of Engagement). This enclosure provides purpose, intent, and limits of the SROE, emphasizing a commander's right and obligation to use force in self-defense. The enclosure further identifies critical principles that are fundamental elements of all ROE. These principles include concepts of unit, individual,

national and collective self-defense; hostile act and intent; and the determination to declare forces as being hostile.

2. *Key Definitions.* One change readily apparent in the 2005 version of the SROE is found in the definitions section where it combines the former definitions of “unit” and “individual” self-defense into the more general definition of “Inherent right of self-defense” to make clear that individual self-defense is not absolute. While the definition was refined, the requirement to notify the SecDef if the SROE was further restricted by a subordinate commander was not changed.

3. *Actions in Self-Defense.* This section keeps with the spirit of Just War Theory in terms of proportionality. Here the SROE state that upon commission of a hostile act or demonstration of hostile intent, all necessary means available and all appropriate actions may be used in self-defense. While reinforcing that forces should attempt to resolve the situation by other means if time and circumstances permit, it makes clear a commander’s authority and responsibility to act both proportionally and decisively. It further states that the scope of force used may exceed that of the event that precipitated it, but that the nature, duration, and scope of force used in response should not exceed what is required to respond decisively.

4. *Enclosures B-H.* These classified enclosures provide general guidance on specific types of operations: Maritime, Air, Land, Space, Information, and Noncombatant Evacuation Operations as well as Counterdrug Support Operations Outside U.S. Territory.

5. *Enclosure I (Supplemental Measures).* Supplemental measures found in this enclosure enable commanders to obtain or grant those additional authorities necessary to

accomplish an assigned mission. Tables of supplemental measures are divided between those actions requiring President or Secretary of Defense approval; those that require either Presidential, Secretary of Defense, or Combatant Commander approval; and those that are delegated to subordinate commanders (though the delegation may be withheld by higher authority). Supplemental measures fall into two broad categories. The first, those that are reserved to the President or SecDef are considered restrictive in nature. Meaning they may not be implemented unless permission to execute a specific mission, use a specific weapon, or use a specific tactic is granted by the President or SecDef. The second category of the supplemental measures includes the measures delegated to subordinate commanders. These measures are considered permissive, meaning designated commanders are allowed to make the decision in order to provide them with a reasonable amount of force to accomplish their missions. The graphic below describes the relationship between the types of operations being conducted and the likely nature of the ROE that a commander will apply.

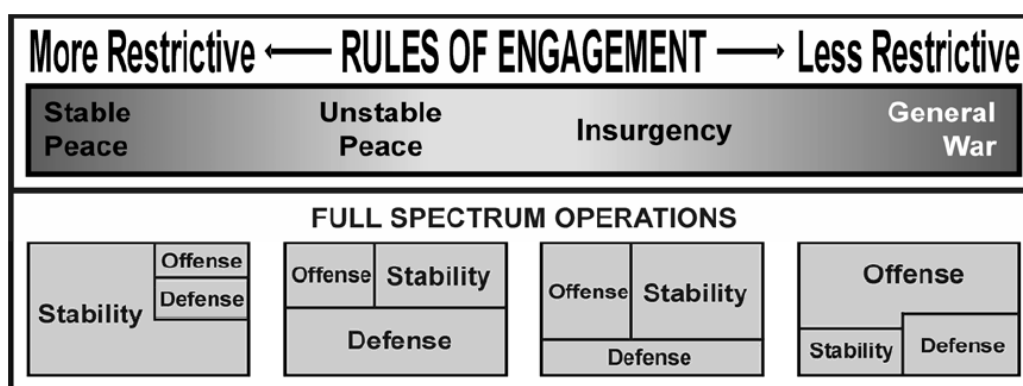


Figure 2 - Rules of engagement and the spectrum of conflict²⁷

As described above, Combatant Commanders apply specific ROE within their Areas of Responsibility (AOR's) depending on the nature of the operation they are conducting. In

fact, within one AOR there may be areas where several different versions of ROE are applied based on the forces present and on whether the forces are conducting operations that are primarily offensive, defensive, or stability focused. The bottom line is that ROE may change. Yet when ROE do change to address specific strategic and political sensitivities of the Combatant Commander's AOR, they must be approved by the CJCS. They are included in the SROE, normally as an enclosure, as a means to assist commanders and units operating in the Combatant Commanders AOR. FM 3-07, Stability Operations continues the description of the importance of understanding the development of ROE with the following:²⁸

Commanders must ensure that Standing Rules of Engagement with further refined theater specific ROE and all subsequent changes or modifications are known and understood by all soldiers. This is especially critical at the lower levels where junior leaders directly apply combat power in full spectrum operations. ROE issues must be considered during COA development, wargaming, analysis, and selection. In addition combat identification measures must be consistent with ROE. ... ROE should be incorporated into situational training exercises (STXs) with the goal of training the soldier to recognize hostile acts, hostile intent, and the appropriate level of force to apply in response.

No statement could summarize better the importance of understanding the process of developing and issuing ROE on today's asymmetric battlefield. The results of not getting it right will be felt first by the junior leaders executing the mission and immediately after by the operational and strategic level commanders as they experience just how flat the world really is.

Commander's Intent

Commander's Intent is defined in joint and service doctrine as a clear, concise statement of what the force must do and the conditions the force must meet to succeed

with respect to the enemy, terrain, and desired end state. This intent serves to fill the space between what the LOW says the force can do, and what the Commander believes they should do in order to achieve the mission. Commanders formulate and communicate their commander's intent to describe the boundaries within which subordinates may exercise initiative while maintaining unity of effort. To avoid limiting subordinates' freedom of action, commanders place only minimum constraints for coordination on them.²⁹ At the strategic level, this intent begins with an expression of the National Strategic End State. Joint Publications 3-0 defines this end state as the following:

For specific situations that require the employment of military capabilities (particularly for anticipated major operations), the President and SecDef typically will establish a set of national strategic objectives. This set of objectives comprises the national strategic end state — the broadly expressed diplomatic, informational, military, and economic conditions that should exist after the conclusion of a campaign or operation.

JP 3-0 further states that Commanders and their staffs must understand that many factors can affect national strategic objectives, possibly causing the national strategic end state to change even as military operations unfold.³⁰ The definition above is further promulgated in service doctrine such as FM 3-07, Stability Operations.³¹

Ultimately, the end state shapes the character of the operation as well as the conditions and objectives necessary to achieve that end state. For commanders to clearly describe the end state, they must possess a systemic understanding of the operational environment, informed through an assessment of the friendly, adversarial, and neutral aspects of the environment. Understanding and analyzing the operational environment using PMESII-PT at the strategic/operational level and ASCOPE at the operational / tactical level is essential to a commanders and staff ability to visualize, describe, and frame the problem. Commanders include the end state in their planning guidance and commander's intent statement. A clearly defined end state promotes unity of effort, facilitates integration and synchronization, and helps mitigate risk.

It is in this shaping of the character of operations, and in the management of risk that the commander's intent and ROE must be synchronized. One that is out of synch with the other will lead to confusion amongst subordinates and possibly to catastrophic failure of the mission.

Depending on the type of operation being planned, there will almost certainly be operational constraints placed on the Joint Force Commander (JFC) in order to accomplish strategic and operational objectives. As mentioned above, in the development of ROE, the President and Secretary of Defense provide guidance based upon input from the operational commander and attempt to balance operational constraints, mission accomplishment, applicable law, protection of the force, and not least of all international and domestic opinion. Operational commanders must then anticipate the effects of ROE on operations and plan accordingly. In developing both more restrictive ROE and the commander's intent, the operational commander must consider the effects of the use of force, particularly the potential for civilian casualties, collateral damage, or friendly casualties that adversely influence the accomplishment of operational objectives. The art of command lies herein as commanders use their intuition, experience, and creative thinking to visualize how they expect the mission to be achieved; all while insuring their subordinates have the latitude to exercise their initiative to do the same – all within the construct of the LOW and ROE.

Battle command is related to commander's intent as it is defined in a similar manner. As defined in doctrine, it is the art and science of visualizing, describing, directing, and leading forces in operations against a hostile, thinking, and adaptive enemy. Battle command applies leadership to translate decisions into actions by

synchronizing forces and warfighting functions in time, space, and purpose in order to accomplish missions. Professional judgment, gained from practice, reflection, study, experience, and intuition guides it. It is in this guidance that commanders must relate their expectations for the endstate of their operations and in doing so must also relate those operations to the use of force and potential application of the ROE.

Thinking adversaries bring an added dimension to the battlefield and the level of command at which strategic effect can be brought insures that no commander can predict with certainty how events will develop. In fact, even friendly actions are difficult to predict because of friction, such as human error and the effects of stress on individuals. In understanding the confluence of the relationships of dynamic uncertainty in terms of the enemy, friendly forces and civilian populations and the media, commanders, who are able to express their intent in terms that can be understood and interpreted by their subordinates, are most likely to succeed in their missions.

Summary

The intent of this chapter was to provide an aid to discovering the connections and potential conflicts between theory, policy, law, doctrine and intent. With this background comes the knowledge necessary to understand the basis for ethical challenges on the battlefield and the rules that govern their adjudication. Given the linkage between National level intent and stated endstates, DOD Policy and the CJCS Standing Rules of Engagement (SROE) it is possible to connect the decisions made by strategic sergeants to their potential impact on operational and strategic level goals. Likewise, it is possible to discover where potential conflicts in strategic level guidance, acceptable limits based on

Just War Theory, and theater ROE may lend to potential catastrophic failure at the tactical level of execution. Regardless of how well written strategic guidance and ROE are, they are designed to insure the tactical commanders have room to make decisions in order to accomplish their missions. In doing so, there is ample opportunity to win a tactical fight decisively while derailing our strategic goals.

¹ (The United States Army Judge Advocate General's Legal Center and School 2006)

² (Walzer 1977)

³ (Walzer 1977)

⁴ (The United States Army Judge Advocate General's Legal Center and School 2006)

⁵ (Walzer 1977)

⁶ (Field Manual 27-10 1956)

⁷ (Field Manual 27-10 1956)

⁸ (DOD Directive 5100.77 1998)

⁹ (Field Manual 27-10 1956)

¹⁰ (Field Manual 27-10 1956)

¹¹ (Field Manual 27-10 1956)

¹² GPW, Art. 13

¹³ Geneva Convention Relative to the Treatment of Prisoners of War Art. 5, August 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135

¹⁴ National Defense Authorization Act for Fiscal Year 2005 see Section 3267(1)(A) of Title 18

¹⁵ (The United States Army Judge Advocate General's Legal Center and School 2006)

¹⁶ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field Art. 12, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31

¹⁷ GWS, Arts. 12 & 13

¹⁸ GWS, Art. 12

¹⁹ (Field Manual 27-10 1956)

²⁰ HR, Art. 23g

²¹ HR, Art. 25

²² (Field Manual 27-10 1956)

²³ (DOD Directive 5100.77 1998)

²⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War Art. 33, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287

²⁵ (DOD Directive 5100.77 1998)

²⁶ CJCSI SROE

²⁷ FM 3-07, Stability Operations, page xx

²⁸ FM 3-07, Stability Operations, page xx

²⁹ Field Manual 6-0, Mission Command: Command and Control of Army Forces, August 2003, page 1-17

³⁰ JP 3.0, Page I-16

³¹ FM 3-07, Stability Operations, page 3-02

Chapter III

Situational Analysis

...even before the dead man surfaced, it was clear that something had gone wrong on that cold Iraqi night down by the river, something wild by the American military's standards of discipline and force, and the problem had wended its way up the chain of command to the unit's commander...

-Dexter Filkins, The Fall of a Warrior King, The New York Times

"My guys have been shot at right through the windshield, and they thought they saw where it was coming from," said Col. Thomas McGrath, commander of the Afghan Regional Security Integration Command-South. "But we said, 'Hey, we don't need to open up with heavy weapons here. We know where it came from, and we'll come back later.'"

- Fawzia Sheikh, Forces Spare Afghani Lives, Washington Times

Introduction

Commanders are obligated to their subordinates to provide comprehensive and continuous training programs focused on understanding the legal definitions of the law of land warfare and the specific rules of engagement for the area they will operate in. However, gauging the impact of these restrictions in actual combat is difficult in any organization. Even more importantly, gauging the impact of the stress of combat and how it impacts on decision-making may be just as difficult to capture. Answering the constant questions: What can be done legally? And, what should be done to further the long term goals of the mission? Are primary concerns of leaders at every level. Just as constant is the search for the right way to interpret these instructions so they are applicable even in the most ambiguous of situations. This process coupled with constant interaction between leaders and their subordinates helps commanders anticipate what

their subordinates are *likely* to do under fire. How the military adjusts to answer these questions will have significant impacts on how the “Strategic Sergeant” performs his duties on a world stage. If we understand how the “strategic sergeant” sees the question, we stand a much better chance of achieving a workable answer.

This chapter begins with an explanation of a model that may be used to dissect an incident to identify where changes in behavior, leadership or inadequate guidance may play a part in creating an environment where a violation of the LOW or commander’s intent might occur. The model is based on the confluence of interaction between legal boundaries, moral limits and the limits imposed by commander’s intent across a very fluid battlefield. By understanding where conflict arises between each “box” and by understanding how other factors might apply pressure to the model, it is possible to gain a much better understanding of the shortcomings of our current methods of issuing and teaching Soldiers to apply ROE.

Using the model described above, this chapter then provides a case study from Operation Iraqi Freedom where the orders or actions of both soldiers and leaders lead to acts that are considered to be in violation of the Law of War. The event aptly titled “The Fall of a Warrior King,” analyzes the events surrounding the possible drowning of an Iraqi civilian after he was thrown from a bridge in January 2004. The results of this analysis coupled with the doctrinal understanding gained from chapter two of this study provides the basis for the critical review of our training methodology found in chapter four.

Analytical Model

This model is based on three critical systems involved in ethical and moral reasoning. The first system represents the legal limits of our behavior as derived from the Law of War and Rules of Engagement. While seemingly resolute and straightforward the LOW and ROE leave enough room for critical analysis and personal interpretation to create a wide band of “grey area” on either side of what is “right” or “just” in which our actions can be interpreted. The second system represents the box imposed by our commander’s intent. For the purpose of evaluation, this represents the actions that the unit commanders at various levels have taken to limit, what are normally legal permissible actions, in order to achieve an effect on the enemy or a population. The final system represents a Soldier’s own personal and moral values, and the limit they may or may not impose on is their actions.

Under normal circumstances, one would expect the boundaries of each system or “box” to be roughly equivalent; meaning acts or actions that are legally permissible and also are also within the commander’s intent will fall within the boundaries of what a Soldier’s moral values will allow. Under the normal strains of armed conflict, circumstances may arise that will cause the boxes to become mal-aligned allowing for acts that, while being within the boundaries of what is permissible in one system, may be outside the boundaries of one or both of the others. The following series of graphics demonstrate how the relationship appears under “normal” circumstances; and then how it may appear under a variety of more stressful conditions. Embedded in each graphic are representative acts or actions used to highlight the effect on a Soldier, leader or even entire units under the strain of asymmetric combat.

Figure three below is an example of what a normal relationship between legal limits, commander's intent and moral values may be. Note that each box is bound in a wide grey band that represents the grey area for each system that is open to interpretation. Under normal circumstances one would expect a hierarchy between the systems similar to what is reflected in figure three. In this case, the law represents the outer boundary, commander's intent a slightly more constraining boundary and finally a person's moral limits representing a third even tighter boundary.

At bottom left, the borders of the three systems are equivalent, meaning that any act or action taken within the boundary of one, meets the requirements of the other two.

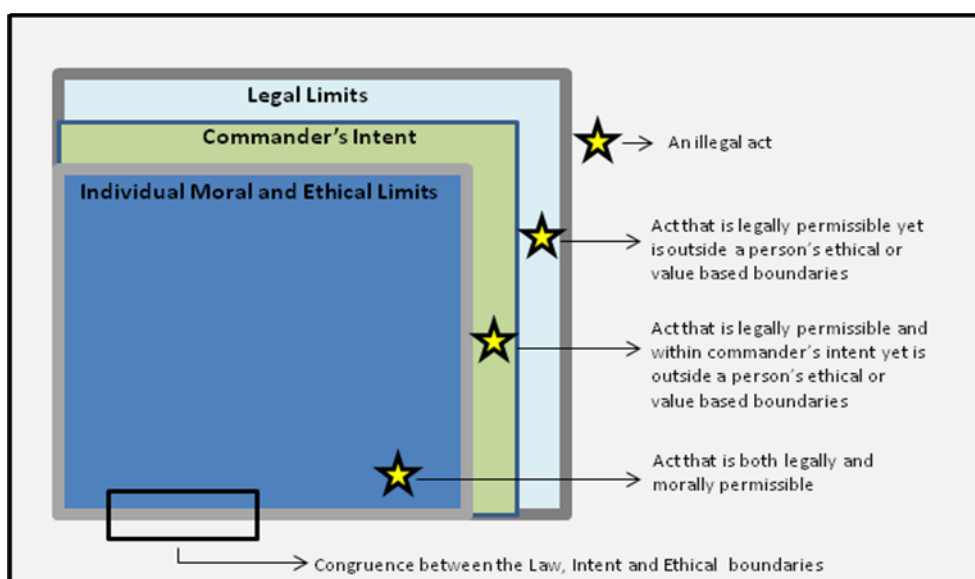


Figure 3. Array of legal and ethical limits in relation to battlefield decisions

At upper right, the boundaries are no longer aligned, reflecting cases where one system may impose limits that are more restrictive than the other systems. Doctrine supports a series of such more stringent restrictions beginning with the theater commander's right to establish ROE that are more stringent than the SROE. Likewise, subordinate

commanders may impose restrictions in their intent that are also designed to limit actions, tactics or the use of specific weapons under certain circumstances in order to achieve a desired effect. A less documented, but no less prevalent disparity occurs when moral limits are not congruous with the boundaries set by a commander or the law. In this case a person may be unwilling or unable to execute an act or follow an order that is legally permissible under the LOW.

Four stars are used in the graphic to represent the range of actions or acts this analysis observes. The first, marking a place inside all three boxes, represents an act or action that when reviewed falls clearly inside the boundaries of all three systems. Such acts make up the preponderance of actions taken across the spectrum of combat on a normal day. The second star represents actions that while permissible under any circumstance are outside the personal ethical boundary of the Soldiers or leaders involved. The third star, falling in the space between what is legally acceptable and the commander's intent represents an act or actions that although legally acceptable, exceed what the commander was willing to accept. The final star on figure three represents an act or action that is clearly illegal, beyond the commander's intent and is completely immoral by any standard.

Circumstances are not always normal. What happens when the pressures of combat, ambiguous guidance and conflicting moral values converge? Figure's four and five represent a shift in the normal alignment of the boundaries of the systems described above due to some external pressure. Figure four depicts a shift in a soldier's moral and ethical limits that now take it out of its normal alignment with the other systems to the point that it exceeds the boundary of what is legally acceptable behavior. While moral

and ethical limits are a matter of personal understanding of the moral and ethical framework, they are further shaped by personal ability, unit confidence, emotional stability and necessity. In some cases the external pressure on the moral framework is significant enough to create a situation where a soldier (or leader) is capable of committing an illegal act. As depicted by the star on the figure below, while such an act clearly falls outside legal limits, the soldier finds that the extreme circumstances they find themselves in permits a change in legal boundaries.

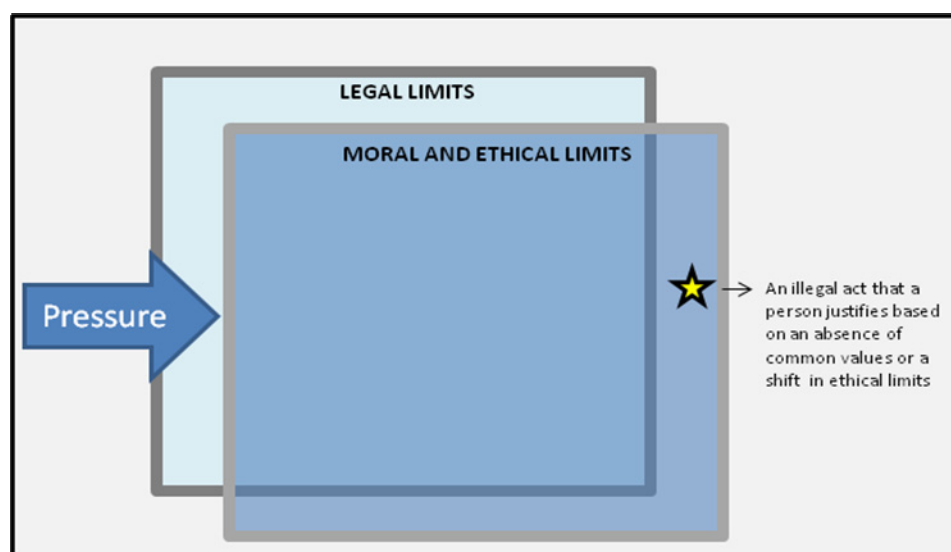


Figure 4. Legal and ethical limits under pressure

A very recent example of this phenomenon is readily apparent in the ongoing trials of three US Army snipers who are accused of placing a spool of wire into the pocket of an Iraqi man shot while cutting grass in April, 2007. In excerpts from preliminary statements and hearings, the soldiers involved indicated they faced intense pressure to produce better results yet understood the moral quandary they found themselves in. Members of the sniper platoon said they felt pressure from commanders to kill more insurgents because U.S. units in the area had taken heavy losses.¹ They also

acknowledge understanding the moral dilemma that the program of baiting areas with bomb-making materials could lead them to.

There was a moral question hovering over the sniper team before Hensley arrived, members said. If they had been authorized to bait an area with bomb-making materials and other props, then lie in wait to kill anyone who fell for the trap, couldn't they also lay the props down after they killed someone?²

Junior enlisted soldiers aren't the only ones to feel pressure in combat. What happens when the pressure is felt by a leader responsible for issuing the guidance inside of which the strategic sergeant is supposed to operate?

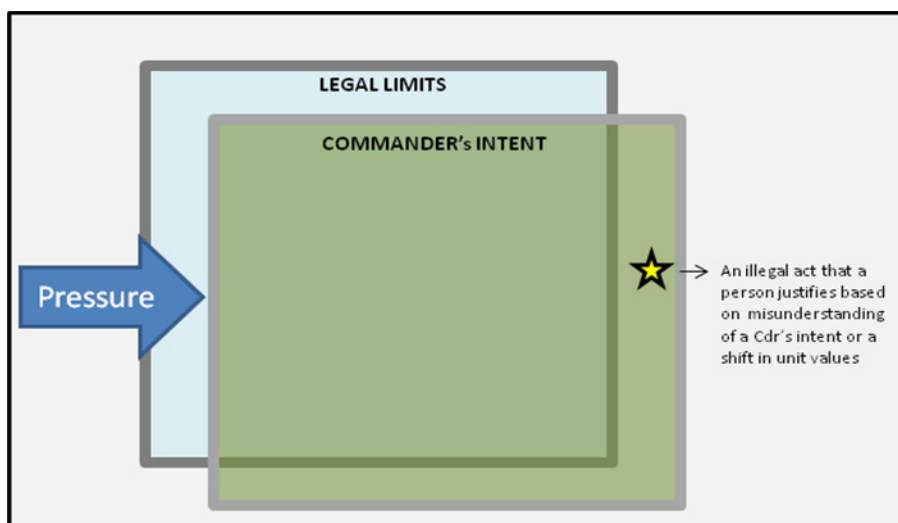


Figure 5. Commander's intent under pressure

Figure five depicts the effect of pressure similar to that in figure four, except in this case the pressure is applied to the commander's intent. As indicated above, the boundaries of what the commander is willing to accept are now out of alignment with what is legally permissible and likewise out of alignment with what is normally morally acceptable. The impact of this misalignment cannot be under-estimated. Soldier's following the guidance of leaders whose own moral limits are breaking under pressure; face a far greater danger

of crossing those same legal boundaries. The following excerpt from an investigation conducted in Iraq in May 2006 is an illustration of that impact.

...the colonel improperly led his soldiers to believe that distinguishing combatants from noncombatants — a main tenet of the military's standing rules of engagement — was not necessary during the May 9 mission, according to a classified report in June by Brig. Gen. Thomas Maffey, a deputy commander tapped by General Chiarelli to investigate Colonel Steele. "A person cannot be targeted on status simply by being present on an objective deemed hostile by an on-scene commander," General Maffey wrote in his June 16 report.³

This case was the result of the investigation into the deaths of four Iraqi men, killed during a raid on an island near Tikrit in May 2006. The investigation would reveal that four of COL Steele's soldiers were responsible for the capture of four men, and who then turned the prisoners loose and shot them as they ran away. An administrative investigation into COL Steele's role in the deaths of the Iraqis centered on how he communicated the Rules of Engagement to his Soldiers before the raid. Military investigators found that the colonel improperly led his soldiers to believe that distinguishing combatants from noncombatants was not necessary during the mission. Brigadier General Maffey's report would further indicate the colonel's "miscommunication" of the rules contributed to the deaths of four unarmed Iraqis.⁴ While investigators would acknowledge that Colonel Steele never ordered or authorized the murder of un-armed civilians, they did hold him responsible for the ambiguous guidance that allowed junior soldiers to commit an illegal act. From this example, one can see the linkage between commander's intent and soldiers' actions on the battlefield. The soldiers involved in the example were clearly influenced by the Brigade Commander's ambiguous guidance, eventually enabling them

to conduct an illegal act because they felt their chain of command had justified their action.

Case Study – The Fall of a Warrior King

In October 2005, New York Times writer Dexter Filkins authored an article entitled “The Fall of a Warrior King” that followed the events that led to the death of an Iraqi civilian and the eventual end of the career of one of the Army’s brightest battalion commanders, Lieutenant Colonel Nate Sassaman.⁵ Published 22 months after the event, using interviews with LTC Sassaman and the Soldiers involved, the Filkins article pieces together what led to a breakdown in discipline and Army values that cut across every level of command within the unit. The Filkins article provides examples of each of the situations outlined in the preceding section. Using these examples, it is possible to gain an understanding of how the situations described above can come into play in a single unit, eventually creating situations where it is possible for leaders to believe it is permissible to operate outside the limits of the Law of War and Rules of Engagement.

The events surrounding “The Fall of a Warrior King” took place near Balad, a largely Shiite city in the Sunni Triangle. LTC Sassaman, a former West Point quarterback had enjoyed fairly warm relations with the Balad locals, while the unit had struggled with hard-core Sunni’s in the surrounding areas such as Samara. In January 2004, his junior officers brought to his attention an incident involving two Iraqi’s a patrol had detained for violating curfew. As his officers briefed him that they had the Iraqi’s jump off a bridge into the Tigris River as punishment, LTC Sassaman realized there was little chance anyone in the more sterile outside world would understand the dynamics of

combat that had led to that incident. In the end, he would make the critical choice to circumvent an ensuing investigation into the potential death of one of the Iraqi's. This decision, when later exposed, would lead to the end of his career. This one event alone is a tragic story, but a more in depth investigation into the unit's behavior was ripe with a litany of decisions and actions that would call the commander's intent into question.

In the fall of 2003, the insurgency in Iraq began to build steam. In response to the upswing in violence, commanders at every level looked for means to bring the insurgency back to a manageable state and to move on with re-building the country. At this point, leaders began issuing guidance that was at some points simply contradictory while at others completely illegal. In Sassaman's case, his division commander Maj. Gen Raymond Odierno, ordered his officers to "increase lethality".⁶ In the excerpt below Filkins indicates how that order was translated by Sassaman.⁷

Sassaman, adored by Odierno for the zeal with which his men hunted down guerrillas, took the order to heart. He sent his men into the Sunni villages around Balad to kick down doors and detain their angry young men. When Sassaman spoke of sending his soldiers into Samarra, his eyes gleamed. "We are going to inflict extreme violence," he said.

Odierno acknowledged to Filkins in a later interview that he in fact had ordered his commanders to kill more insurgents in the fall of 2003, yet he followed up by indicating he had encouraged them to use non-lethal force when possible. When asked how his guidance related to his subordinate commander's guidance he indicated that he did not get into details, but left it up to his subordinate commanders to determine the methods to use.

On the opposite side was Sassaman's brigade commander, Colonel Fredrick Rudesheim. Colonel Rudesheim would eventually counsel Sassaman that his excessive use of force would alienate the Iraqis even more and would serve to fuel the insurgency even further. In some cases, he went as far as to deny Sassaman the use of white phosphorus mortars that Sassaman's unit had taken to using to burn down the wheat fields where ambushes had taken place. Filkins also indicates that Rudesheim prohibited Sassaman's men from smashing open the gates on the exterior walls of Iraqi homes during searches, insisting that the soldiers climb over the walls instead. Major Robert Gwinner, Sassaman's deputy, summed up the problems the conflicting guidance caused Sassaman with the following statement. "Ray is saying, 'Kill, kill, kill, and Rudesheim is telling us to slow down. It drove Nate crazy."⁸ Using figure five from the previous section it is possible to provide a graphical representation of effect of the pressures the conflicting guidance that Sassaman had to endure.

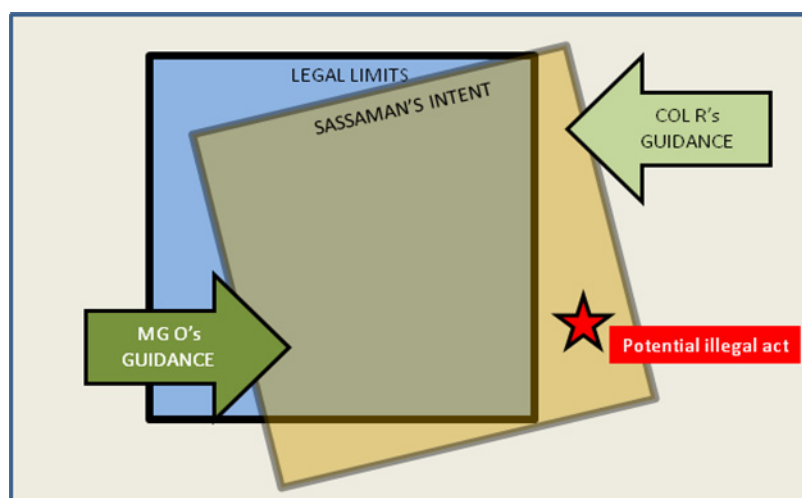


Figure 6. Pressures of conflicting guidance

With this depiction in mind, and an understanding of the mindset of the senior leaders involved it is possible to look deeper into Sassaman's unit to see where discipline and the

Rule of Law began to unravel and where the boundaries of right, wrong, and just began to blur.

Under the new, more aggressive policy in the battalion, one of Sassaman's units began to destroy the homes of suspected criminals and insurgents. Filkins relates one such event as described by First Sergeant Ghaleb Mikel.⁹

...a group of Sassaman's soldiers came to the house of an Iraqi man suspected of hijacking trucks. He wasn't there, but his wife and two other women answered the door. "You have 15 minutes to get your furniture out," First Sgt. Ghaleb Mikel said. The women wailed and shouted but ultimately complied, dragging their bed and couch and television set out the front door. Mikel's men then fired four antitank missiles into their house, blowing it to pieces and setting it afire. The women were left holding their belongings.

Surprisingly, when asked about similar tactics in November 2003, Lieutenant General Ricardo Sanchez, the top commander in Iraq, acknowledged that he had authorized the destruction of homes thought to be used by insurgents, saying, "Well, I guess what we need to do is go back to the Law of War and the Geneva Convention and all of those issues that define when a structure ceases to be what it is claimed to be and becomes a military target."¹⁰ There is no indication that any review was ever done in Sassaman's unit. By itself, the tactic was alarming, but in Sassaman's unit it would not be an isolated incident. On the same day, First Sergeant Mikel and a patrol of soldiers encountered a group of men while searching for the same insurgent. When the men could or would not provide any information about the insurgents, the Soldiers had them lie on the ground and do push-up's. The soldier's laughed and moved on afterward. While not entirely an illegal act, the incident does show the level of contempt for human dignity that had crept into Sassaman's leaders.

The figure below graphically depicts the relationship of these two events. In this graphic, the unit's understanding of Sassaman's intent is in the darker box with grey boundaries, reflecting the grey areas where decisions are blurred. In this example, the box reflecting Sassaman's intent is also darker and beginning to overshadow the boundaries of legal limits below it. Clearly the leaders involved in these two incidents felt that while they were operating within their commander's intent, their actions were considered legal and would never be called into question. Yet even a basic review of the Geneva Conventions and our own laws indicate differently.

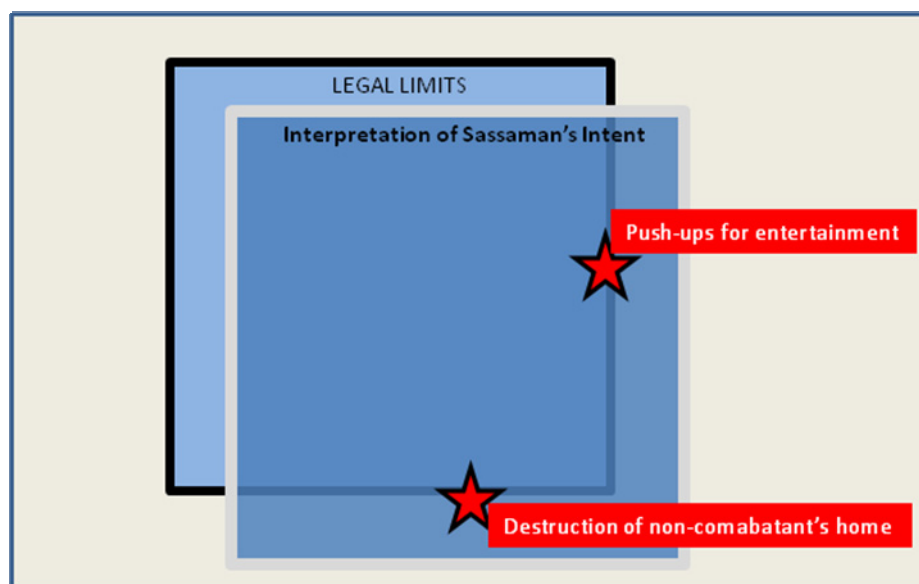


Figure 7. Intent overshadows the law

The incident that led to Nate Sassaman's fall occurred along the Tigris River on a cold night in January 2004. As related by Filkins, Sassaman's soldiers were under instructions to detain anyone they found outside after curfew. Understanding that the average Iraqi's understanding of time was somewhat more liberal than the average U.S. Soldier, the patrol leader Sergeant Carl Ironeyes tended to give them some leeway early

in the evening. Rather than detain them, he would merely question them, then reinforce the curfew requirements while sending them back to their homes. On this night, after stopping two men who had clearly been picking up building supplies, he had warned them about the curfew and sent them on their way only to be ordered by his platoon leader, Lieutenant Jack Saville, to detain them. Saville, after joining the patrol, ordered them to detour to a nearby bridge on the way back to their base, where he intended to teach the two men a lesson by making them jump off the bridge into the river below. When a sergeant balked at the first location for the jump 60 feet above the water, Saville agreed to have the men taken to a location on the bank below the bridge. He then ordered a squad, led by Sergeant Tracy Perkins, to take the men to the spot. From here, the two men were forced to jump into the river 10 feet below. The accounts of what happened to the men afterward differ. The Iraqis claim that one of the men drowned, while the Soldiers insist that they saw both leave the water. No one disputes the fact that the incident took place.

To his credit, Sassaman says he was never told of the bridge jumping tactic and if he had been asked, he would not have approved it.¹¹ Unfortunately, Sassaman's deputy, Gwinner recognized that while they had not discussed using the bridge jumping tactic as a deterrent for curfew violations, he felt the tactic did fall within the scope of what they considered to be non-lethal force. Gwinner did not indicate in his interviews how the tactic might fit with the Law of War in regards to the requirement to safeguard non-combatants. Sassaman indicated to Filkins that he learned about the incident a few days later, while Colonel Rudesheim would recall telling Sassaman that if the allegations were true that his men could be court-martialed for the act. Sassaman's downfall came not

from the act itself, but from his decision to avoid the complete truth in order to protect his men from criminal prosecution. In his interviews with Filkins, Sassaman indicated that while throwing the Iraqis into the river was wrong, it did not constitute a criminal act, yet he did not believe that a court, sterilized from combat would see it that way. He summed up his feelings to Filkins by saying "I really didn't lie to anybody, I just didn't come out and say exactly what happened. I didn't have anything to gain by ordering a cover-up. There was no way I was going to let them court-martial my men, not after all they had been through."¹²

The next graphic indicates how this discussion appears in relation to the interpretations of Sassaman's intent and the LOW. Using the same model as in figure seven, the bridge jumping tactic, which Sassaman clearly saw as wrong appears well outside legal boundaries, while Gwinner's comments reflecting his understanding of Sassaman's intent and how the unit probably saw the boundary.

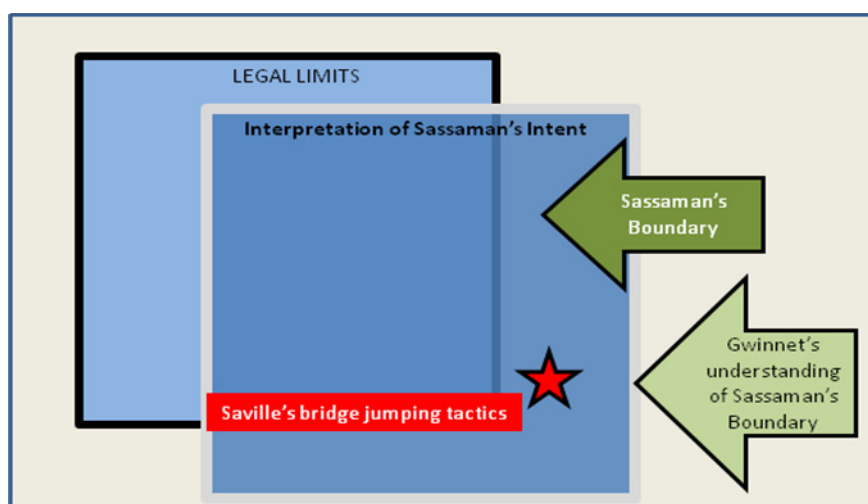


Figure 8. Confused boundaries

At least one soldier in Sassman's command did not see the boundary of right or wrong as being quite so difficult to discern. Specialist Ralph Logan, a member of Saville's platoon, did not see the tactics as helpful. "I kind of looked at it as higher schoolers picking on freshmen, us being the seniors; the Iraqis being the freshmen," he would tell Filkins in an interview.¹³ As for other tactics employed by the unit, Logan would indicate that people were slapped around and roughed up after they were detained. Logan told Filkins it was gratuitous and further indicated that if Sassaman didn't do it himself, he knew about it.¹⁴ Logan would eventually draw the line in January 2004 with the event at the bridge. When ordered to escort the two Iraqis to the bank of the river he refused, not because he felt the two men would be killed, but because the platoon was clearly not following orders to return the two men to the base camp. Specialist Logan had a history of not following what he deemed to be his unit's excessively violent tactics, going so far as politely folding clothes and placing things out of the way when searching a room, while his fellow Soldiers destroyed the furniture. Recognizing the dilemma raised by Logan's refusal, one of the other Sergeants with the patrol ordered Logan to stay behind and guard their vehicles while the rest went to the river.

The final graphic below reflects the interaction of moral and ethical limits in relationship to the LOW and to commander's intent. In this graphic, a box has been added in a darker shade of blue to represent Logan's ethical boundaries. The boundaries of this new box are clearly contained within the limits of what is legally acceptable, yet fall significantly short of what the unit interpreted Sassaman's boundaries to be. As indicated above, Logan's ethical boundaries clearly would not allow him to participate in the platoon's actions, despite his understanding that Sassaman condoned their actions. It is

in this final graphic that an understanding of all the competing pressures and limits on the battlefield can have, resulting in different interpretations of the same instructions and different actions by Soldiers when faced with similar situations.

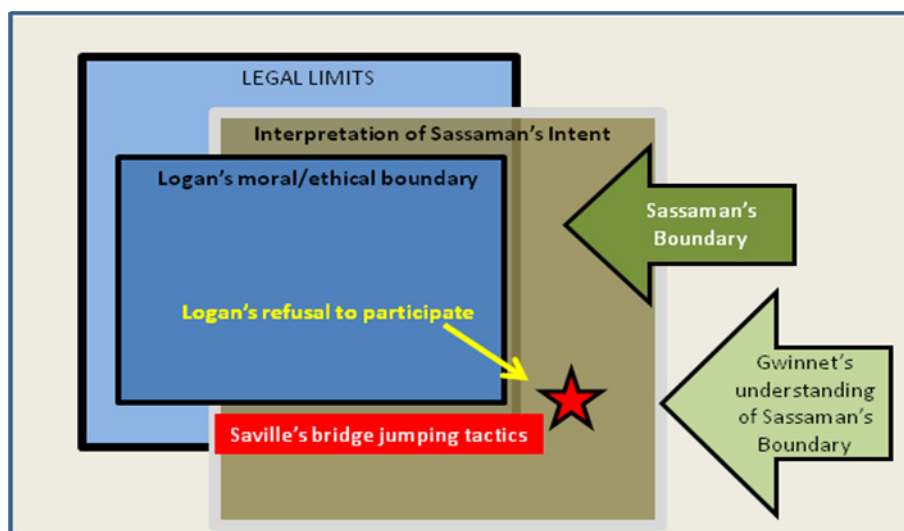


Figure 9. Ethical boundaries

Conclusions from “The Fall of a Warrior King”

The Tigris river incident was investigated and eventually led to the Court Martial of both Lieutenant Saville and Sergeant Perkins. While prosecutors were never able to produce the body of the Iraqi man who supposedly drowned as a result of being forced to jump in the river, both Saville and Perkins were convicted of assault for throwing the men into the river. Saville for his part would receive a 45-day sentence and Perkins six-months. For their part in attempting to interfere with the investigation into the incident, both Sassaman and Gwinner would receive General Officer Letters of Reprimand by none other than Major General Odierno, the officer whose intent they thought they so closely emulated.

At no point in the investigations or in the trials were the underlying issues surrounding the events addressed. Sassaman in a fit of frustration went so far as to scold a jury of second-guessing one of his soldiers in the field. "I never thought there was any criminal intent involved," Sassaman testified. "It was a bad call. And while we're thinking about that, we can just talk about everybody making mistakes over there."¹⁵ Filkins followed Sassaman's lead, posing at the end of his article "The Fall of a Warrior King," some interesting questions in a short, but insightful paragraph.

But in exploring the possibilities of "nonlethal" force - an idea meant to spare Iraqis, not kill them - the soldiers had crossed a line. But where is the line? How much more serious was it to throw an Iraqi civilian into the Tigris, which was not approved, than it was to, say, fire an antitank missile into an Iraqi civilian's home, which was? Where is the line that separates nonlethal force that is justified - and sometimes very painful - from nonlethal force that is criminal? ... Sassaman's soldiers were operating in a "doctrinal vacuum." The generals wanted higher body counts, and they wanted the insurgency brought under control, but they left the precise tactics up to the soldiers in the field.¹⁶

As Filkins questions would lead one to believe, the problem is not just one for tactical commanders to figure out. The problem cuts across tactical, operational and strategic lines and must be addressed at every level of command.

Summary

This chapter began with an explanation of a model that may be used to dissect an incident to identify where changes in behavior, leadership or inadequate guidance may play a part in creating an environment where a violation of the LOW or commander's intent might occur. Describing and understanding the interaction between legal boundaries, moral limits, and the limits imposed by commander's intent across a very

fluid battlefield is the first step in addressing Filkins' questions. By understanding where conflict arises between each "box" and by understanding how other factors might apply pressure to the model, it is possible to gain a much better understanding of the shortcomings of our current methods of teaching and issuing ROE and to then apply solutions to the problems raised by Sassaman and Filkins before another Warrior King falls.

¹ (White)

² (Parker)

³ (van Zielbauer)

⁴ (van Zielbauer)

⁵ (Filkins)

⁶ (Filkins)

⁷ (Filkins)

⁸ (Filkins)

⁹ (Filkins)

¹⁰ (Filkins)

¹¹ (Filkins)

¹² (Filkins)

¹³ (Filkins)

¹⁴ (Filkins)

¹⁵ (Filkins)

¹⁶ (Filkins)

Chapter IV

Training

Our enemies cannot match America's overwhelming conventional combat power, so they have resorted to insurgency and terrorism. As a result, we are actively engaged in counterinsurgency (COIN) operations in Iraq, Afghanistan and elsewhere. COIN operations are legally intensive and require patience, creativity and adaptability.¹

-Major General Black, US Army Judge Advocate General

In general, the Department of Defense Law of War program obligates commanders to provide their subordinate units comprehensive and continuous training programs focused on understanding the legal definitions of the Law of Land Warfare and the specific Rules of Engagement for the area they will operate in. Likewise, commanders are also charged with establishing in their subordinate units a sense of values that serve as a moral compass in the absence of guidance to guide their subordinates' actions throughout the depth of a complex battlefield. The purpose of this chapter is to describe how the Law of War, ethics and Rules of Engagement are taught in an organization preparing to deploy for combat operations in support of the Global War on Terrorism. The vehicle used to base this review on is an Army Brigade Combat Team and includes how soldiers and leaders are taught from basic trainee up through and including the Joint Task Force Headquarters that issues the Brigade their combat instructions. While an Army Brigade is chosen for this example, the training, methodology and execution are virtually the same for combat units deploying from any service.

This review is conducted in two parts. The first part reviews the institutional training Soldiers and leaders receive as part of their formal professional military education. The second part uses the Joint Force's culminating training event for deploying forces, formally titled the Combat Training Center Program – Mission Readiness Exercise, to review collective training designed to educate the unit in context with their possible missions. The goal of Law of War and ethics training at this point in collective training is to insure that before a unit deploys, soldiers and leaders alike have a clear understanding throughout an organization of the answers to two basic questions: What can be done legally? And, what should be done to further the long term goals of the mission? The process of educating Soldiers should assist leaders in establishing a core set of values in their units that will guide the application of force regardless of the situations they find themselves in. This process, coupled with constant interaction between leaders and their subordinates helps commanders anticipate what their subordinates are *likely* to do under fire. How the military adjusts to answer these questions will have significant impacts on how the “Strategic Sergeant” performs his duties on a world stage.

Institutional Training

The review of institutional training describes the core subjects related to ethics and the Law of War that are taught to the junior leaders (Sergeants) and the Senior Leaders (Brigade and JTF Commanders) that make up the critical levels of leadership on the battlefield. This review specifically focuses on the Sergeants' initial leadership

training at the Warrior Leaders Course (WLC), and the Brigade Commander's instruction at the Senior Service College (SSC) and pre-command courses (PCC).

The Warrior Leaders Course

The Primary Leadership Development Course (PLDC) now known as the Warrior leaders Course (WLC) is the first mandatory professional military education a new sergeant in the Army is required to complete in order to gain their rank. Army Regulation 350-1, The Army Training Program describes the purpose and intent for the WLC:

The Warrior Leader Course (WLC) is a branch–immaterial course conducted at Regional NCOAs worldwide and training battalions. It provides basic leadership training for Soldiers selected for promotion to SGT. The WLC provides Soldiers an opportunity to acquire the leader skills, knowledge, and experience needed to lead team–size units. It is the foundation for further training and development.²

Three major educational objectives for WLC include 1) establishing self-discipline, 2) instilling professional ethics, and 3) leading, disciplining, and developing Soldiers. In a series of lessons, sergeants are provided a total of 11 hours of ethics and ROE related instruction in several focused areas. The instruction, described below, is geared to achieve an understanding of how to apply ethics to on the battlefield.³

- a. Army leadership (8 Hours) - During this lesson, sergeants are instructed on the Army leadership framework, the human dimension role in leadership, communication skills, problem-solving, leadership styles, and maintaining discipline.
- b. Detainee Operations (2 Hours) – This lesson provides sergeants with the understanding of how to handle and process detainees. Sergeants will learn how to

search and restrain detainees guided by the Warrior Ethos, Army values, and U.S. military policy, to provide humane treatment and care to detainees from the moment of their capture until their eventual release.

- c. Counter Insurgency (1 Hour) – This lesson provides sergeants with the principles and guidelines for counterinsurgency operations (COIN). Students will learn how to handle the training of indigenous security forces during counterinsurgency operations. Students will also learn how to apply the appropriate leader and ethical responses to a given situation during counterinsurgency operations.
- d. Situational Training Exercise (STX) (96 Hours) – Sergeants participate in an end-of-course situational training exercises. During these exercises, Small Group Leaders (SGLs) assign students to leadership positions where they will lead a section/squad. SGLs evaluate the students in their leadership abilities and on how they use their troop-leading procedures and other leader skills they learned in the course. Also cultural awareness, personnel recovery and counterinsurgency are integrated into the 96-hour event.

While the Army has gone to great strides to revise the Warrior leaders Course in attempts to incorporate lessons from the Global War on Terror, it still has shortcomings. Noticeably absent from the program of instruction is any training geared specifically to help sergeants understand their obligations to operate within the Rule of Law other than situations arising from detainee operations. A year-long mental health study conducted at the behest of the Department of Defense made light of the same shortcoming. In an October 2007 presentation to the Commandant of the Marine Corps, panel members went so far as to recommend the Army and Marines “Develop Battlefield Ethics training based

on the “Soldiers’ Rules,” using OIF-based scenarios, so that Soldiers and Marines know exactly what is expected of them in terms of battlefield ethics and the procedures for reporting violations.⁴ Other studies take issue with the method used to inculcate values and virtue into our soldiers in course such as the WLC. In a spring 2007 edition of *Parameters* Paul Robinson indicated the use of lists of virtues⁵ such as the Army Values in training Soldiers to operate in a combat environment could be criticized because “in particular, the emphasis on character might have the effect of causing military leaders to believe that all unethical behavior is the product of failures of character (“few bad apples” theory).” Robinson went on to state that, “Many times such failures are the product of deficiencies in institutions or practices.”⁶ In the same article, Robinson indicated findings in his research that were very similar to the results indicated by the DOD Mental Health Assessment Team in 2007.

Teaching soldiers that they must be brave, loyal, and so forth, does not tell them what to do when there are conflicts between the requirements of various virtues. Virtue ethics needs to go beyond mere rote learning of lists of virtues in an attempt to teach soldiers to reason and understand exactly what the virtues mean and how to resolve conflicts between them.

In closing his article, Robinson made a final recommendation indicating that “A few extra lectures on “warrior values” are unlikely to transform the behavior of soldiers in Iraq and elsewhere.” Again, in similar fashion to the 2007 MHAT study, Robinson called for a more informal process of “institutional and peer pressure designed to help shape and develop character.”⁷

The Senior Service Colleges

The Senior Service College (SSC) is generally the last professional military education a senior officer receives prior to being promoted to general officer and is most

likely the last PME they will receive prior to assuming command of a Brigade Combat Team (BCT). Army Regulation 350-1 states the SSC is designed for a military member, LTC and above, or DA civilian, GS-14 and above, who occupies a leadership position (both command and staff) that requires a thorough knowledge of strategy and the art and science of developing and using instruments of national power (diplomatic, economic, military, and informational) during peace and war. While this description applies to virtually all of the Services colleges, the Army War College goes further to describe that it prepares selected military, civilian, and international leaders to assume strategic leadership responsibilities in military or national security organizations; educates students on employment of the U.S. Army as part of a unified, joint, or multinational force in support of the national military strategy; researches operational and strategic issues; and conducts outreach programs that benefit the nation.⁸ The 2007 course catalog lists the following as learning objectives for students attending the school:

- a. Distinguish the uniqueness of strategic level leadership and apply competencies required by strategic leaders;
- b. Use strategic thought processes to evaluate the national security challenges and opportunities facing the United States in the 21st Century;
- c. Evaluate the theory of war and strategy;
- d. Evaluate DoD, joint, interagency, intergovernmental, multinational, and NGO processes and relationships, including Army contributions to the nation in peace and war;
- e. Evaluate the role of landpower in joint, interagency, intergovernmental, and multinational operations;

- f. Synthesize theater strategies, estimates, and campaign plans to employ military power in a unified, joint, multinational and interagency environment;
- g. Synthesize critical elements, enablers, and processes that define the strategic environment in peace and war;
- h. Study and confer on the American military profession and guide its future direction.

While the Law of War and ethics based instruction are not parts of the core curriculum, a number of elective courses are offered by the various departments within the college. For instance, the Department of Command, Leadership and Management offers an elective on Ethics and Warfare, while the Department of National Security Studies offers an elective on Law for Senior Commanders and another on the human dimension of war. The Center for Security Studies offers two more possibilities with an elective on establishing the Rule of Law and another on Just War analysis. Unfortunately, despite the wide selection of contemporary Law of War and Ethics electives available to War College students they make up only a small number (5 of 86 available electives) of those available and vying for equal attention. Further, the War College student is restricted to participating in just five electives, one of which must be a regional studies program. Lt Colonel David Lloyd Roberts, a retired officer of the United Kingdom's armed forces and an international Red Cross (ICRC) delegate to the Armed and Security Forces in South Asia found fault with this approach. He states in a 1997 article for the *International Red Cross Review* that while he recognized that a staff college commandant would always be pulled in numerous directions to include more of various types of instruction, he foundt:

...it is at these very institutions that a nation's future high command must be instructed in the provisions of the law which are one day likely to influence them

and their decisions as commanders. In the light of a nation's obligation to provide this instruction, ignorance of the law is inexcusable. It is in peacetime that we have the time to consider the law. Once the "balloon goes up", it is too late.⁹

LtCol Roberts continued to make the recommendation that instruction on the law ought to be given equal footing with the core courses in the strategy of war stating:

Just as we might teach drills and principles for attack and defence, so as a matter of routine we should also include elements of the law so that they become second nature and will not be dismissed in the fog and confusion of battle.¹⁰

The lack of emphasis in understanding the law is not unique to the Senior Service Colleges. Even among the Advanced Operational Art programs that produce the staff officers destined to become senior planners for Joint Task Force and Combatant Commanders there is limited opportunity and virtually no requirement to understand the implications of international law and United States treaty agreements on military operations. While every level of command has lawyers charged with the responsibility to review plans and operations orders to insure they comply with international law, the planners who are charged with writing the words that will send an army to war are under trained in the laws that govern those actions. The following summary of the events surrounding the North Atlantic Treaty Organization's (NATO) bombing campaign in the Balkans provides an example of the importance international courts place on the verbiage in military orders and public comments made by senior military leaders.

In May 1999, a United Nations Prosecutor established a committee to assess war crimes allegations made by Serbia against NATO and the United States stemming from the allied bombing campaign of April and May 1999. A committee appointed by the prosecutor investigated a number of specific allegations to include crimes against the environment, attacks on civilian targets and the attack on the Chinese embassy in

Belgrade. In the course of their investigation, the committee reviewed both the public statements made by senior administration leaders and the objectives directed by military leaders as a means to ascertain the legality of the execution of the NATO campaign. Using a joint statement to the United States Senate by the Secretary of Defense and the Chairman of the Joint Chiefs of Staff, the committee determined the scope of the military objectives for the campaign. A NATO report entitled *Kosovo One Year On* described the actual target sets NATO attacked and a series of reports from Human Rights Watch established the results of missions against the targets. From these and other documents, the committee concluded their findings into not just the legality of the bombing missions themselves, but also into the legality of specific targets, the munitions used against them and the tactics used by pilots to engage them. While generally dismissive of Serbian war crimes claims, the committee had this to say about the wording of NATO objectives:

The choice of targets by NATO [] includes some loosely defined categories such as military-industrial infrastructure and government ministries and some potential problem categories such as media and refineries. All targets must meet the criteria for military objectives []. If they do not do so, they are unlawful. A general label is insufficient.¹¹

The committee's report continued by outlining the appropriate conditions under which certain target sets could have been targeted and in doing so provides the verbiage a planner and commander must understand. The U.N. Committee demonstrates this in answering the question on the legality of the NATO attack on the Belgrade Radio and Television Station.

The list prepared by Major General Rogers included broadcasting and television stations if they met the military objective criteria (para. 38 above). As indicated in paras. 72 and 73 above, the attack appears to have been justified by NATO as part of a more general attack aimed at disrupting the FRY Command, Control and Communications network, the nerve centre and apparatus that keeps Milosević in power, and also as an attempt to dismantle the FRY propaganda machinery.

Insofar as the attack actually was aimed at disrupting the communications network, it was legally acceptable.

Finally, in their concluding remarks the committee argued that while the legality of certain actions and objectives was unclear, the law in those cases was equally unclear, making it virtually impossible to make a final recommendation to proceed in the investigation any further.

Pre-Command Course

The mission of the Army Pre-Command Course is to provide a training and education program to prepare Battalion and Brigade Command and Command Sergeants Major selectees for duties associated with command. This training serves as the transition point from senior officers' formal professional military education conducted in a sterile classroom environment to the education that directly supports training collective units to perform their wartime missions. A branch immaterial course is taught at the Combined Arms Center, Fort Leavenworth, Kansas divided into two distinct parts. The first part is a week-long senior leader's seminar directed by the Chief of Staff of the Army. This session exposes the command designees to the senior leaders of the Army in small group sessions focused on helping the commanders understand the Army's direction and priorities. One of the focus areas of this session is the Law of Land Warfare and Detainee Operations – a session normally conducted personally by the Commandant of the Judge Advocate Generals School. The second part of the course, called the Brigade Combat Team Commanders Development Program (BCTCDP) is a two week session geared to prepare tactical commanders to face the difficulties of

command in combat. It is this section of the course that a review of Law of War training is most relevant. BCTCDP places emphasis on Law of War training using the New York Times article, *The Fall of a Warrior King*, as a vehicle to teach a single session on ethical decision making in combat. As described in the previous chapter, the lessons learned from Task Force 1-8's experiences in Iraq are limitless. Placed in the context of discussion amongst experienced former battalion commanders and future brigade commanders, the discussion is even more valuable as peers are able to discuss, question and evaluate a matter of unique importance on the battlefield in a peer learning environment. As LtCol Roberts mentioned in his article for the International Red Cross Review, this is exactly the environment the military needs to learn in, to truly understand the depth and complexity of law of War and ethical issues in combat.

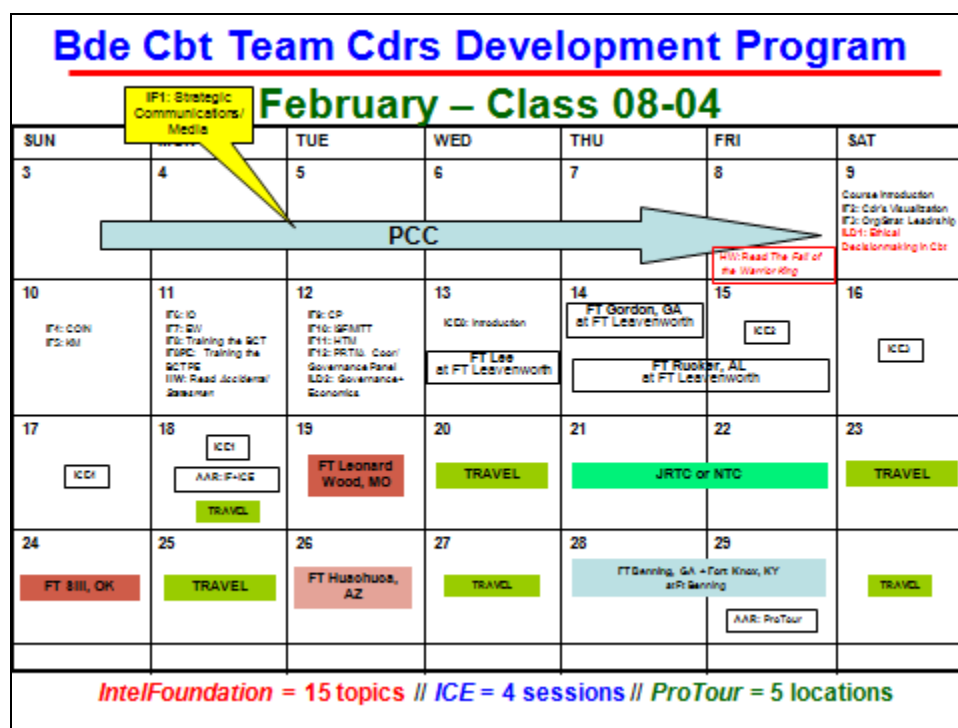


Figure 10. BCTCDP Schedule¹²

Unfortunately, as the chart above indicates this discussion is limited to a single session during the two week course.

Combat Training Center Program

No longer an Army-centric program; the Joint Forces Combat Training Center Program is the culmination of a unit's collective and individual training in preparation for deployment. In this setting, where no expense is spared, joint and multi-national units train and certify side-by-side, in near-combat environments. As stated in Army Regulation 350-1, the objectives of the Army Combat Training Program are 1) increase unit readiness 2) develop battlefield leaders 3) embed doctrine; provide feedback on unit tactical effectiveness to participants; and 4) provide data to improve doctrine, organization, training, materiel, leadership and education, personnel, and facilities (DOTMLPF) input to the combat and training development processes.¹³ It is at one of the CTC's that leaders and Soldiers are put to a final test to determine if they are prepared for combat. It is also at the CTC's that the Law of War issue's and ethical dilemmas become difficult for soldiers, leaders and units to wrestle with as they finally face them in increasingly ambiguous situations. For many, this is the last place short of combat where there is an opportunity to gauge the effectiveness of a lifetime of legal and ethical training. Units that experience problematic Law of War incidents while training at CTC's are required to conduct commander's inquiries or training versions of Army Regulation (AR) 15-6 investigations. These commander's inquiries and AR 15-6 investigations are in effect, after action review (AAR) methods designed to loosen the friction regarding bottom-up reporting of law of war incidents. Investigations are reported to higher headquarters, collected, analyzed, and disseminated. In actual

operations, investigations provide lessons learned to the higher headquarters, to the unit conducting the 15-6 investigation, and to other units operating in theater. This lessons learned process enables corrective actions and other adjustments to be made. For example, successful units challenge themselves during combined arms rehearsals for directed operations by using vignettes focused on what actions ground force commanders and air mission commanders deem appropriate for positive identification, hostile acts, and hostile intent.

The chart below reflects the complexity of a CTC rotation as a unit transitions from situational training exercises through a relief in place into a full-up seven day exercise that includes more than 1,000 full-time roll players in a simulated setting.

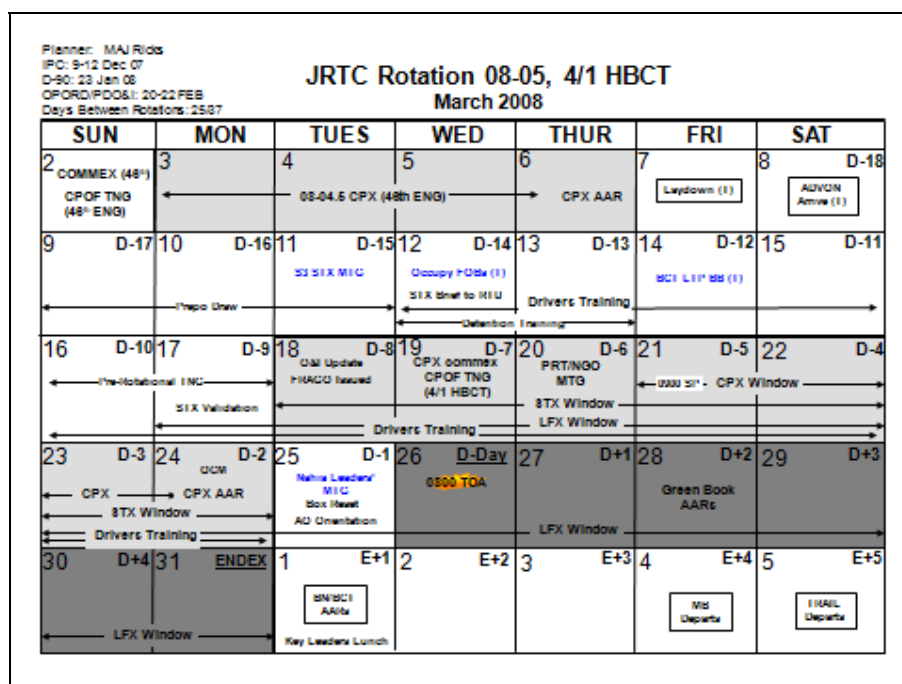


Figure 11. BCT Rotation at a CTC¹⁴

Unit and individual performance is evaluated at each CTC by a cadre of experienced Soldiers who serve as senior mentors for training units in a variety of

specialized areas. In terms of legal and ethical evaluations, observation and mentorship is provided by leaders at every level to include former battalion and brigade commanders with combat experience. Military lawyers who have served deployed units around the world are also present to include their views. These highly professional teams are adept at creating situations through virtual, live, and constructive training situations that are ripped from the after action reviews of units in combat. Feedback from situational exercises embedded in the CTC program is provided to the unit's leaders through a series of face-to-face after action reviews (AARs) and in the form of a take home package (THP) that includes recommendations for additional training the unit should conduct to improve performance in critical tasks. The CTC further promulgates lessons learned from the program through the Centers for Lessons Learned, which serves as a clearing house for research into training issues and recommendations for improving performance.

A survey of past trends from CTC rotations indicates that based on brigade and battalion training observations by observer/controllers (O/Cs) during mission rehearsal exercises, units that fully internalized the Law of War, ethics and the Rules of Engagement (ROE) successfully engaged the enemy and simultaneously garnered the support of the local populace. The most successful units implemented thorough and comprehensive ROE training programs to help Soldiers learn, understand, and internalize the Law of War, ROE and the commander's intent. Unfortunately many units still struggle to translate higher headquarters orders and commander's intent into tasks and rules that Soldiers fully understand and can apply. Additionally, many units are challenged to find the time in their pre-deployment training schedules to dedicate enough resources to effectively train their units prior to executing a CTC Mission Readiness

Exercise. These challenges results in units deploying for their final exercise without the requisite training required to perform very complicated tasks at even a minimal performance standard. The following comment from a recent rotation at one of the CTC's indicates just one such problem.

This BCT taught ROE/LOW classes to a majority of the Soldiers in the brigade. This program, however, did not adequately train the force for this training exercise. Even though the ROE/LOW training was mandated in the base order legal annex, sent out in two separate BDE FRAGOs and personally communicated w/LNO officers -- videotaped evidence revealed: (1) less than 15% of the BCT was trained by X2; (2) over 60% of the BCT was trained by X5; and (3) approximately 90% was trained by X9. Serious ROE/LOAC training issues arose during the first 5 days of this rotation.¹⁵

A comment from a take home package for a separate unit indicates the training issue is not endemic to just one unit. This comment reveals that despite receiving ROE and Law of War training at home station, the quality of that training was inadequate in the face of simulated problems.

A video-taped cross-sampling of 11 Soldiers from five separate Battalions, in three separate Areas of Operation, revealed that 11 of 11 Soldiers had an ROE class; 4 of 11 Soldiers did not have ROE cards; and 10 of 11 Soldiers could not articulate the difference between "hostile intent" and "hostile act."¹⁶

Leaders in both the Iraq and Afghanistan theaters recognize the effects of training deficiencies and continue to press for additional training on the appropriate use of force to both defeat an enemy force and to protect friendly assets. The CTC program continues to focus evaluations and training on the issues associated with the Rules of Engagement and Law of War.

For well over a year, the National Training Center (NTC) has focused rotational units on EOF/ROE tactics, techniques, and procedures (TTP) and best practices gained from in-country theater visits and continuous data mining. The NTC solution includes issuing EOF-specific equipment that better enables Soldiers and

leaders to control a situation when time is needed to determine whether or not to shoot. Units are trained on the most recent theater-generated procedures and apply these in two major venues at the NTC: multi-echelon lane training and within the mission rehearsal exercise. The consequences of each negative EOF/ROE incident will significantly impede the rebuilding and transition process and must be understood by Soldiers and leaders at all levels.¹⁷

The 3rd and 4th quarter FY2007 trends analysis conducted by the National Training Center indicates some success in their program yet calls for units to continue to rehearse procedures frequently; incorporating this fundamental knowledge into all training and standard operating procedures.

Trends analysis from a CTC provides some insight into training performance. However, the ultimate test of how well training is absorbed by a Soldier is to observe it in execution. The following chart from the 2007 Mental Health Assessment Team review of battlefield ethics provides some insight into just how many of the soldiers deployed to combat actually receive the training indicated above.

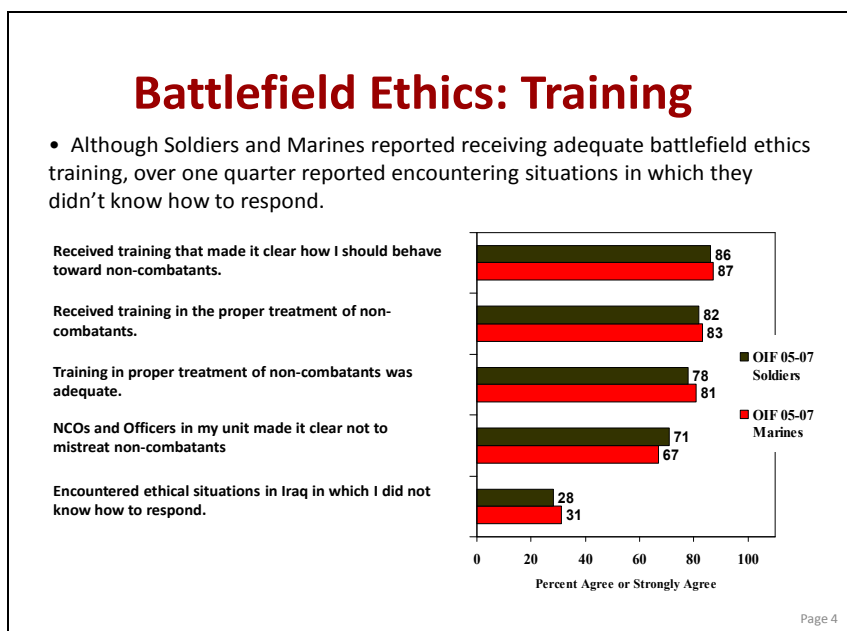


Figure 12. Battlefield Ethics Training¹⁸

As the chart indicates, most, but not all respondents indicated they received training prior to deployment. Yet, even among those who received training there were indications that almost one third had experienced ethical situations for which they had no idea how to respond.

Conclusions

The goal of this chapter was to review the institutional and collective mechanisms used to train military forces to apply the Law of War on an asymmetric battlefield. This review indicates some success and a number of shortcomings in the process of educating Soldiers and leaders in establishing a core set of values in their units that will guide the application of force, regardless of the situations they find themselves in. The final chapter of this thesis makes recommendations for addressing these shortcomings while reinforcing the successes of a transformational military. Ultimately, these improvements will provide the “Strategic Sergeant” the tools he needs to perform his duties on a world stage.

¹ *TJAG Sends*, Volume 37-13, March 2007

² (Army Regulation 350-1 2007, 63)

³ (United States Army Sergeants Major Academy 2007, 1.6-1.11)

⁴ (Mental Health Assessment Team IV (MHAT-IV) 2007)

⁵ Army Values – Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, Personal Courage

⁶ (Robinson 2007, 31)

⁷ (Robinson 2007, 34)

⁸ (Army Regulation 350-1 2007, 59)

⁹ (Roberts 1997)

¹⁰ (Roberts 1997)

¹¹ (Committee Established to Review NATO Bombing Campaign Against the Federal Republic of Yugoslavia 1999)

¹² (School for Command Preparation 2007)

¹³ (Army Regulation 350-1 2007, 14-15)

¹⁴ 1st Cavalry Division Daily Frago 07038_22 Feb 08, accessed online through AKO-CAVNET, 1 Mar 2008

¹⁵ Raterman, Joe, Major USA, Senior Legal Observer/Controller, Take Home Package 06-04 Joint Multinational Readiness Center, Hohenfels Germany, April 2006

¹⁶ Raterman, Joe, Major USA, Senior Legal Observer/Controller, , Take Home Package, Take Home Package 05-12 Joint Multinational Readiness Center, Hohenfels Germany, September 2005

¹⁷ (CTC Trends 07-02 2007)

¹⁸ (Mental Health Assessment Team IV (MHAT-IV) 2007)

Chapter V

Summary and Conclusions

I never thought there was any criminal intent involved, it was a bad call. And while we're thinking about that, we can just talk about everybody making mistakes over there.¹

-LtCol. Nate Sassaman, Commander Task Force 1-8

The purpose of this thesis is to determine if the US Military insures the “Strategic Sergeant” is prepared to make value based ethical and moral decisions in a joint, multi-national and multi-cultural environment. As events have shown, the importance and impact of the “Strategic Sergeant” cannot be underestimated. His decisions, actions and performance in front of a global audience have the potential to change the face of conflict. With this in mind, it is imperative that every military service-member deploy with the knowledge and training required to execute their duties and make decisions that are based on the Law of War and the Rules of Engagement. It is equally imperative that leaders at every level meet their obligations to insure that these same service-members enter the fight with clear commander’s intent that provides a common set of values for making fast-paced, ethical decisions in a multi-cultural world. In the end, while our goal is to win the war, we must insure our most precious national asset, “the Strategic Sergeant” returns from the battlefield knowing that his actions will withstand the scrutiny of his peers, family and a global audience long after the last fight is over.

The final section of this thesis, in two parts, summarizes the training and challenges faced by the “Strategic Sergeant” on today’s asymmetrical battlefield and makes recommendations for countering the potential moral conflicts he will face. The

first part summarizes challenges in terms of understanding legal limits and responsibilities under the rule of law in a multi-national and multi-cultural environment. The second part summarizes and provides recommendation for collective training required to prepare for the broad difficulties our “Strategic Sergeants” face in making decisions in ever more ambiguous situations, while operating at increased distances from their chain of command.

Understanding the Law of War

While the Rules of Engagement are largely based upon the Law of War, international and internal political factors, and operational factors, they are not universally understood by Soldiers, leaders or even the politicians who enact them. The continuing arguments in the U.S. and in international courts over the definition of torture are just a microcosm of the potential conflicts that exist in the wording and translation of current laws. Other conflicts exist between coalition partners, who must attempt to reach a common consensus in regards to the meaning of certain legal standards for the application of these laws. The U.N. committee to investigate potential war crimes in the Balkan conflict of the 1990’s clearly found that in many cases international laws were insufficient for them to understand and apply a set of judicial standards in order to complete their investigation.² It is somewhat useless to teach standards for the application of the laws of war if the meanings of those laws are still being debated. Certainly leaders must recognize the incongruity of requiring Soldiers to perform certain tasks while the legal basis for the execution of those tasks is being publically debated.

As described in chapter four, the military does have a system of training and education that meets the requirements of DOD Directive 2311.01E, *The Law of War Program*. Yet, the system is insufficient to prepare soldiers and leaders for warfare in the midst of a civilian population. Rather than only basic instruction at the lower levels of the institutional training system, and elective courses offered at higher levels: the military requires a concerted system of lifetime learning that builds from one institutional experience to another. Training on the legal and human aspects of the application of the Law of War must be mandatory at every level. At senior levels of institutional training, such as the Senior Service Colleges, officers must be provided expanded training to include exposure to the international organizations whose experience in investigating war crimes allegations is immutable. In both regards, the training provided must be well thought out and presented, not just by lawyers, but also by instructors who have recent and relevant experience, and who above all, believe in their subject.

Leaders must understand the psychological aspects of warfare, particularly when it is carried out in the midst of an urban population, in front of a global audience. Outside of generic leadership training there is limited education provided to leaders that exposes them to the situations described in the analysis of the events surrounding the actions of Task Force 1-8, so aptly described in Dexter Filkins' *The Fall of a Warrior King*. Service education programs for unit leaders must expand on the efforts of the Army BCTCDP in exposing senior leaders to the human nature of 21st Century Warfare. Cases of ethical and moral breakdowns in units that lead to Law of War violations must undergo rigorous after action reviews, to expose all of the possible cause and effect

relationships that culminated in the break down. These reviews must then be distributed as training support packages to support both institutional and collective training.

Collective Training

Experience in the Combat Training Center Program indicates some success is addressing the subordinate issue of escalation of force (EOF) and Rules of Engagement training. Efforts at the CTC's to train and promulgate lessons learned back to units should continue with an eye towards insuring situational training exercises are as mentally demanding, as they are physically demanding, for the entire unit.

The successful application of the appropriate amount of necessary force, at the appropriate time, is absolutely essential to the tactical success of small units on the ground, and to the subsequent success of our nation's strategic goals. If Soldiers apply too much force, they risk alienating the population and make future tactical missions more difficult. If they hesitate, or apply too little force, Soldiers jeopardize their self-defense or the defense and security of others. Commanders must insure their training programs provide comprehensive training that begins with unit Judge Advocate General officers teaching Law of War classes to all Soldiers, focusing on creating an understanding of the legal definitions of terms such as hostile act, hostile intent, declared hostile force, and positive identification.

Commanders must engage all their Soldiers in open and honest reviews of various scenarios and vignettes to fully convey their views on the applications of the Law of War and Rules of Engagement. As recommended by LtCol Roberts in his article for the International Red Cross Review, leaders must talk to their Soldiers and seek their

feedback, in an environment that seeks to bring peer pressure and understanding to bear. Commanders absolutely must avoid regulating this to subordinate leaders by telling others to simply “make it happen”. Post-engagement feedback enables the further development of lessons learned. ROE training and preparation does not only begin at home station and end upon deployment. Arguably, the learning process should continue until the Soldier has safely redeployed to home station.

By explaining their views in terms that are applicable and understandable to Soldiers, commanders will articulate what is reasonable in their mind in very real terms. During preparation for combat operations, leaders review plans, check ammunition, make communications checks, and conduct a walk-through and a rehearsal. In addition, the pre-combat inspection process must include a mechanism to ensure Soldiers have learned, understood, and internalized their commander’s intent when it comes to applying ROE to a number of different situations. Tactical success in the dynamic and ambiguous counterinsurgency environment, promotes overarching strategic objectives when Soldiers understand and can differentiate between when they can apply force, versus when they should apply force.

Conclusion

The strategic impact of decisions made and actions taken by junior leaders in Iraq and Afghanistan are well documented. In light of these impacts, senior leaders continue to struggle with strategic communications and training geared to insure Soldiers on today’s battlefield share a common set of values and understand how to apply them in combat. These same junior leaders are faced with increasing conflict between the morale

standards of multi-cultural operations and a litany of guidance that is not easy to assimilate or to understand.

The answer to the research question “Does the U.S. Military insure the “Strategic Sergeant” is prepared to make value based ethical and moral decisions in a joint, multi-national and multi-cultural environment?” is a resounding “somewhat.” The research documented in this thesis clearly shows the military has a system, and a keen interest in improving how they train “Strategic Sergeants” to correctly determine what they should do as well as what they can do in combat. In this light, leaders throughout the Department of Defense must continue to improve the clarity of the Laws of War, the regulations that govern military actions in combat, and the training provided to the “Strategic Sergeant” who faces the ambiguity of combat in front of a global audience.

¹ Dexter Filkins, The Fall of a Warrior King, The New York Times, 23 October 2005

² UN Tribunal investigation of Balkan War Crimes

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Vita

COL Peter A. Newell enlisted as an armor crewman in the 635th Armor Battalion, Kansas Army National Guard in December 1980. He served in a variety of positions within the battalion before being commissioned as an armor officer in December 1985. Upon graduation from Kansas State University in May 1986, he entered active service as an Infantry Officer. COL Newell's initial assignment was with the 82d Airborne Division, Fort Bragg, North Carolina where he served as a Rifle Platoon Leader, Company Executive Officer and Battalion S1 in the 4th Battalion 325th Airborne Infantry Regiment. While assigned to the division he participated in the airborne assault on Torrijos-Tocumen Airport and subsequent combat operations supporting Operation Just Cause in December 1989.

In 1991, COL Newell was reassigned to the 1st Battalion, 6th Infantry (Mechanized), 3rd Infantry Division, Vilseck, Germany where he assumed command of Charlie Company in June 1992. COL Newell returned to the United States in February 1994 and was reassigned to the 3rd Battalion, 75th Ranger Regiment, Fort Benning, Georgia where he served until June 1996. Following the Command and General Staff College in 1996-1997, he was reassigned as the Battalion S3, 1st Battalion, 12th Infantry (Mechanized), 4th Infantry Division, Fort Carson, Colorado. In May 1999 he became the S3 for the 3rd Brigade Combat Team, 4th Infantry Division. After departing Fort Carson in June 2000, he was reassigned to the Office of the Joint Chiefs of Staff, Pentagon, Washington DC, where he served as the Senior Operations Officer, Operations Team Two, National Military Command Center.

In June 2003, COL Newell assumed command of the 2nd Battalion, 2nd Infantry Regiment, 3 Brigade, 1st Infantry Division in Kosovo. He subsequently redeployed the battalion to Vilseck Germany in July 2003, and then deployed the battalion to Iraq in February 2004 in support of Operation Iraqi Freedom II. Upon return from OIF II, COL Newell relinquished command of the 2nd Battalion, 2nd Infantry and was reassigned to Hohenfels Germany as the Senior Infantry Task Force Observer Controller and subsequently as the Senior Brigade Combat Team Observer Controller at the Joint Multi-national Readiness Center (JMRC).

Upon graduation from the Joint Advanced Warfighting School COL Newell will assume command of the 4th Brigade Combat Team, 1st Armor Division at Fort Bliss, Texas.