

Rules of Engagement for The United States Armed Forces: The Noose For The Troops

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On June 16, 1775 British soldiers stood ready to storm Bunker Hill in the American colonies, which was held by the colonists. Over night the colonists built a six-foot tall dirt wall fortress to protect themselves. In the morning British general, General Howe, marched his troops up to the fortress and they began to storm Bunker Hill. The British started their ascent on the hill and colonists were told, (it is unclear by whom whether it was General Israel Putnam or Colonel William Prescott) “don’t fire until you see the whites of their eyes.”¹ The battle of Bunker Hill was part of the American Revolution, a pivotal point in United States history. However, the order given to the colonists at the battle is similarly of utmost importance; it is one of the most frequently cited illustrations of an early Rule of Engagement. In the plainest sense of the term, Rules of Engagement (ROE) are essentially as old as military operations themselves. From the moment that humans began to have organized warfare and battle, military commanders sought to stringently control the use of force and how soldiers went about using force, in order to maximize total combatant power to achieve their specific goals. From ancient Mesopotamia, to the Hundred Years War, to the American Civil War, to German Blitzkrieg, World War I, World War II, the Vietnam War, and the wars in Afghanistan and Iraq, the development of warfare has included an ever-increasing level of complexity and sophistication intended to both maximize combat power and safeguard its engagement advances. All of this is to be done while not infringing, undermining, or destabilizing, nationally delineated policies, laws, and goals. Rules of Engagement are a more recent iteration of a wider evolutionary process formulated in order to attain the latter. Although some may consider the order given at the Battle of Bunker Hill to be

¹ History.com Staff, “Battle of Bunker Hill.”

more categorized as a tactical control measure to reserve firepower and ammunition, it certainly helped define the limitations and circumstances under which the American colonial forces were essentially allowed to engage with their British opponents, and is thus easier understood as a forbearer to the more current ROE that exist today.

“Rules of Engagement both as a term and recognized concept emerged in the 1950’s in the form of special instructions issued to govern U.S. air operations.”² During this time the Joint Chiefs of Staff (JCS) were, and still are, the senior most military body in the U.S. national chain of command. They provide complete operational direction and even more importantly control of the armed forces, which was implemented during World War II (WWII) and formally established by the *National Security Act of 1947*.³ However, after WWII, the *Department of Defense Reorganization Act*, more commonly know as the *Goldwater-Nicholas Act of 1986*, was put in place. With this legislation enacted the JCS no longer has operational exclusive decision-making or command authority over the armed forces⁴ - the JCS no longer have executive authority to command combatant forces⁵. Currently, the Joint Chiefs of Staff serve as a group of senior military advisers where the chairman functions as the primary military advisor to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense.⁶ While the JCS can no longer command armed forces – to the *Goldwater-Nicholas Act of 1986* – they still have considerable influence over existing

² Martins, Diner, and Emswiler, “Military Law Review.”

³ *50 U.S.C.*

⁴ *Public Law 99-433-OCT. 1, 1986.*

⁵ *About the Joint Chiefs of Staff.*

⁶ *Ibid.*

military planning and missions where they provide additional essential operational direction and guidance to the armed forces. Law is important to govern and control civilian citizens' everyday lives; it is something that most individuals understand as necessary. However, the laws and rules, specifically the Rules of Engagement, which control American soldiers actions are hardly understood and even less known by U.S. citizens. These ROE have, like a snake coiled around prey, become too constricting; these guidelines have grown into rules that are twisted around the fingers of Washington and are now muddled with political factors, diplomatic issues, policy, and of course, law. It is because of this that United States ROE have become increasingly difficult to understand and most importantly to operate within; they must be changed.

It was the members of the JCS who helped establish the Rules of Engagement. While rules were employed with more frequency during the 1960's and 1970's, ROE still did not have any degree of standardization. It was not until 1986, when the Joint Chiefs of Staff expanded Peacetime ROE (PROE) for all U.S. forces, that the United States began standardizing a set of guidelines for soldiers. To address the gaps in the PROE military lawyers and members of the Joint Chiefs of Staff got together and eventually created the 1994 *Chairman of the Joint Chiefs of Staff Instruction 3121.01, Standing Rules of Engagement for U.S. Forces*. These rules have since been revised, but the rudimentary structure remains.

“The SROE (enclosure A through K) establish fundamental policies and procedures governing the actions to be taken by US commanders and their forces during all military operations and contingencies and routine Military Department functions occurring outside US territory and

outside US territorial seas...ROE also apply to air and maritime homeland defense missions conducted within US territory or territorial seas, unless otherwise directed by the Secretary of Defense (SecDef).”⁷

The SROE encompass both standing self-defense establishments relevant to U.S. armed forces during all military operations, with elaborating guidance particular to the various fields in which United States forces function, including certain explicit and specific mission sets. “The basic structure is designed to ensure, in a standardized form, the inherent right and obligation of units and individuals to exercise self-defense at all times, while providing a process for the rapid development of mission-specific ROE, which will always depend on the legal, policy, and military circumstances prevailing at the time.”⁸

Since the end of World War II in 1945, lessons have been learned about military operations, and then they have been relearned, showing that the success of any military operation that is planned out relies heavily on the proper and disciplined use of force. ROE’s are the essential tool to help this process; they are the primary rules that govern the use of force and thus function as one of the foundations of operational law and discipline. The Department of Defense (DOD) dictionary defines Rules of Engagement as “directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered.”⁹ ROE’s have become the primary doctrine

⁷ Chairman of The Joint Chief of Staff, “Standing Rules of Engagement/Standing Rules For The Use Of Force For US Forces.”

⁸ McChrystal, *U.S. Military Operations: Law, Policy, and Practice*. 217.

⁹ “Department of Defense Dictionary of Military and Associated Terms.”

tool for controlling the use of force that U.S. combatants use during all military operations. However,

“striking the delicate balance between achieving the legitimate and necessary application of force, and the risk of inhibiting military initiative and creating hesitancy of the military force to protect and defend itself, begins with drafting ROE at the strategic level that ‘are versatile, understandable, easily executable, and legally and [strategically, operationally] and tactically sound.’¹⁰”¹¹

While different branches of the military sometimes have various doctrines, the ROE’s generally tend to contain and achieve three basic functions:

“to serve as a control mechanism for the transition from peacetime to combat operations (armed conflict), to provide standing force protection authority and guidance to unit commanders and individual soldiers in the form of self-defense rules, and to provide a command and control mechanism for national command authorities and military commanders to ensure the use of military force complies with strategic political and military aims.”¹²

The Rules of Engagement have their origins in three tenants: diplomatic and political factors, operational requirements, and the law.¹³ The interconnected relationship of these three pillars, or rather the intentions of ROE, frequently overlap and their convergence can be better portrayed by the Venn diagram below on the following page.

¹⁰ Lee et al., “Operational Law Handbook.”

¹¹ McChrystal, *U.S. Military Operations: Law, Policy, and Practice*. 218.

¹² Lee et al., “Operational Law Handbook.”

¹³ Ibid.

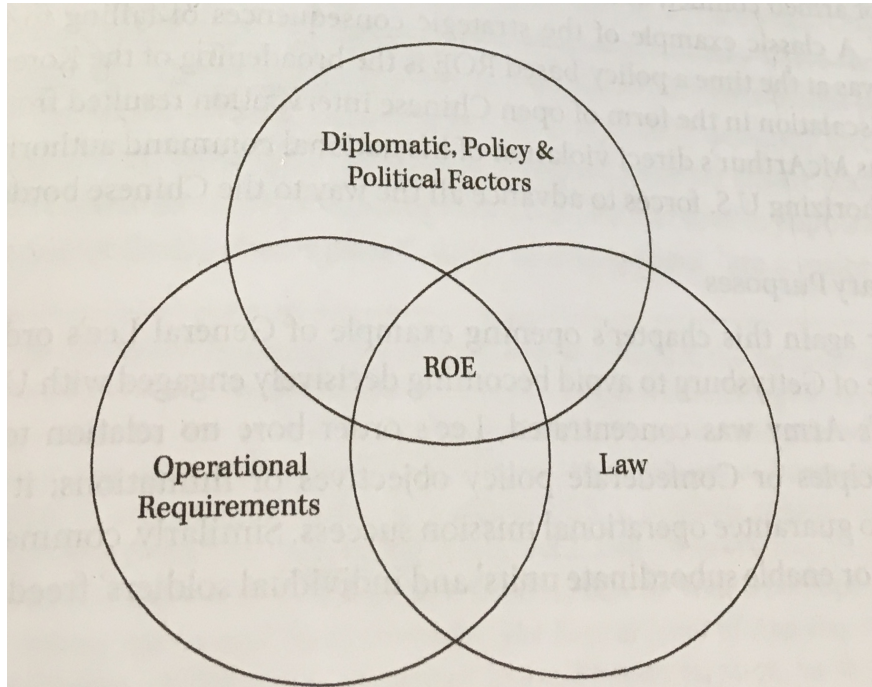


Figure 1 Elements that influence ROE development

Marines, airmen, soliders, and the entirety of the United States armed forces face drastically difficult choices revolving around when, what, and where they can engage hostile forces and the Rules of Engagement have begun to make these decisions even more challenging since the revision of ROE in 1986. The ideas of what many citizens thought the old days of war were, war consiting of pandomonium of bullets flying in every direction are now ideas of the past; the days of reckless killing abandon are gone. No longer does total conflict in which aggressive belligerents engage in combat with little or no care to figure out who are civilians and who are combatants exist. Contemporary warfare is now marked by multifaceted policies that place constraints and restraints on soldiers. One of these such policies is the Law of War (LOW), also known as the Law of Armed Conflict (LOAC). Contrary to many citizens' and media beliefs, war is overseen by law:

“The Law of Armed Conflict (LOAC) is a source of significant legal authority for and restriction on a wide range of U.S. military activities. It is not a single law but rather a collection of international treaties and customary international law, and it has a profound influence on the conduct of warfare...U.S. forces are required to operate in accordance with U.S. legal interpretations of the LOAC; failure to do so is punishable by law.”¹⁴

Without effective and understandable ROE, U.S. soldiers run the risk of breaking a Rule of Engagement and being punished by military or U.S. laws. This threat raises concerns creating danger towards military missions. The first danger is that since troops are so worried about following the Rules of Engagement that they will respond tentatively to an attack, thereby allowing harm to themselves, their fellow soldiers, or essentially failing the mission. The second is the opposite risk, that combatants will strike out too aggressively, in turn harming innocent civilians. Ultimately, an ill-timed over aggressive or over hesitant result could very well turn a once successful deployment into a political failure.

While slightly confusing, Rules of Engagement are in fact not themselves international laws. The LOAC and the Rules of Engagement are two distinctly different sources of operational regulation. Granted ROE include, and most often incorporate, the obligations of the LOAC although, they are not synonymous. However, it is particularly important to note that even though ROE are not contingent with the LOAC, they must be completely dependable and consistent with this, and for that matter, any other pertinent

¹⁴ Frederick and Johnson, *The Continued Evolution of U.S. Law of Armed Conflict Implementation: Implications for the U.S. Military*. iii.

body of law. “Rules of Engagement often impose restrictions far narrower than those required by law...all ROE must comply with the LOAC.”¹⁵

Within the armed forces the Rules of Engagement have been an ever-festering issue. While the Peace Time Rules of Engagement (PROE) and the Standing Rules of Engagement (SROE) act as blanket guidelines to operate under, each war, mission, or operation has its own set of Rules of Engagement. For example, the ROE in Vietnam were different than those issued in Iraq as they are tailored to the specific situation or mission. Many times, to keep the ROE legally sound, operations officers will delegate the drafting of the Rules of Engagement to judge advocates; although this too can create problems for these men and women do not always possess knowledge of the combat weapons system and the ways in which each platoon operates. As a result “soldiers may regard ROE as ‘handcuffs which impede combat operations and increase risk to soldiers.’ Rather than helping the matters, [sometimes] the ROE simply may add frustration or confusion to the already adverse circumstances under which soldiers must decide whether to fire.”¹⁶

This feeling that soldiers have has existed for a while now. In 1993, in Somalia many felt as though they were operating under extremely restrictive Rules of Engagement and therefore could not get the job done that they were sent out for. This is a very tricky issue that is ever present. In February 2016, an article titled “U.S. Military Rules of Engagement in Afghanistan Questioned” was published in the *Wall Street Journal*. An American military advisor commented, “we have the capacity to annihilate

¹⁵ McChrystal, *U.S. Military Operations: Law, Policy, and Practice*. 222.

¹⁶ Martins, Diner, and Emswiler, “Military Law Review.” 20.

the [Taliban] threat. But because of the Rules of Engagement under the new mission, our hands are tied.”¹⁷ Because the present method of informing soldiers of ROE involves contribution from so many levels of command, the input of many important decision makers, and changes particular rules from mission to mission, it creates the problem of soldiers struggling to sort the Rules of Engagement into clear conceptual categories.¹⁸ Figure 2 illustrates the level of complexity and the numerous stops ROE make before they reach soldiers.

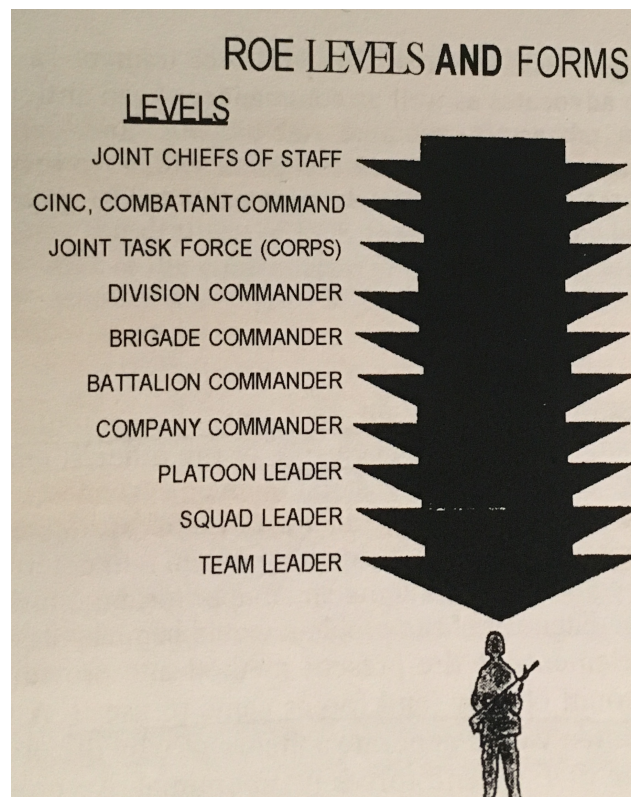


Figure 2 ROE Levels

¹⁷ Donati and Totakhil, “U.S. Military Rules of Engagement in Afghanistan Questioned Some Coalition, Afghan Officials Want U.S. Forces to Play a Larger Role in Fighting Taliban Advances.”

¹⁸ Martins, Diner, and Emswiler, “Military Law Review.”

Due to this factor of rules being subject to change per mission and having to follow a chain of command, soldiers sometimes have difficulty in high stress missions remembering the specific rules of how and who they can and cannot engage with. Ronald E. Yates a former war correspondent and foreign correspondent for the *Chicago Tribune* explains,

“The ROE used in Afghanistan include things like, ‘requiring U.S. troops to confirm that a Taliban fighter is armed before they can fire.’ Imagine what it must be like for a U.S. soldier fighting the Taliban. You aren’t allowed to shoot at the Taliban unless you confirm they are armed. What this means is that you can be shot by a terrorist while you are still trying to confirm they are armed and shooting at you.”¹⁹

Figure 3, a political cartoon used by Yates, further explains the issues of dealing with numerous restrictive ROE on the front lines.

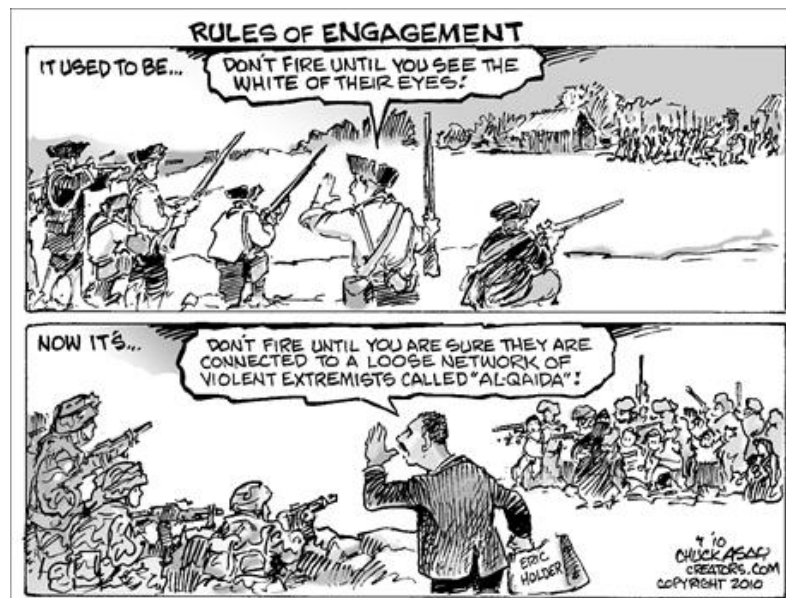


Figure 3 ROE Political Cartoon

¹⁹ Yates, *Restrictive Rules of Engagement = Disaster*.

It is beginning to become more evident that these Rules of Engagement have posed complications to U.S. forces in the wars in Afghanistan, Iraq²⁰, and other missions that are currently taking place. The question then becomes have these Rules of Engagement always been this way, in the manner that they are so constrictive and restrictive, or was there some cataclysmic historical and politically significant military turning point in which they changed? When initially taking a glance at ROE's it is hard to see where this "major transition point" came from, or for that matter if a changing point even exists. While some of this may be due to the classified nature of military documents, there are a few moments that stand out in history, like the battle of Mogadishu, that could have possibly influenced ROE becoming more stringent and complicated to work around.

The battle of Mogadishu, fought from 3 – 4 October 1993, was the most deadly fight the United States forces had faced since the Vietnam War.²¹ United States Army and Delta Force – some of America's most highly trained and elite military forces – were deployed and sent to Somalia by President George H.W. Bush in 1992. Their mission was part of the United Nations humanitarian operation to reinstate enough order and control so the starving Somalis could finally be fed. One of the main sources of power in this part of the country, specifically Somalia, was the control of food supplies. Stolen food was used to secure the faithfulness of leaders and warlords as sometimes sums of

²⁰ The war in Iraq began on March 20, 2003 and ended on December 28, 2011 and the war in Afghanistan commenced on October 7, 2001 and ended on December 28, 2014. While these wars may have technically come to an end many challenges revolving around ROE still remain. These encounters with challenging ROE have affected and are still affecting current U.S. military advisers and remaining troops in the armed forces; even though the U.S. has technically "withdrawn" from Iraq.

²¹ NPR Staff, "What A Downed Black Hawk In Somalia Taught America."

food were used to trade for weapons with other countries. The objective given to the U.S. was to capture Mohamed Farrah Aidid, the warlord of the area, and other high-ranking leaders of his militia.²² What was intended to be a simple several hour mission turned into pure chaos. Two U.S. blackhawk helicopters were shot down with rocket propelled grenades (RPG) and a massive city battle commenced where 18 Americans were killed, 73 wounded, and hundreds to thousands of Somalis killed.²³ Just like in any military situation the Rules of Engagement were employed in this mission.

As this mission started out as a humanitarian procedure, with the United Nations U.S. forces were under the peacetime Rules of Engagement (PROE), which were the blanket terms of what to do in an operation situation. One would think that since this was the most deadly battle the United States had seen since Vietnam that this would have potentially been one of the pivotal turning points for constraining the ROE. However, taking a more in-depth look at the ROE the soldiers were under, once the situation turned bleak, this was not the case. These U.S. men and women were forced to operate under a robust set of Rules of Engagement when in the high stress gun fight they were locked into ensued. A short, but succinct, clip from the 2001 film *Black Hawk Down*, directed by Ridley Scott, vividly dramatizes just how vulnerable the United States forces were due to the Rules of Engagement.

While the film clip only lasts about 16 seconds, what it portrays within this short amount of time is extremely powerful. It is also important to note that while this film is a dramatic narrative, it is based upon actual events. Rampant city streets are shown with

²² Kiger, *BEHIND THE BATTLE OF MOGADISHU*.

²³ Ibid.

Somalis running in every direction and the audience, as well as the soldiers, are unable to identify who is a civilian and who is linked to the warlord; thus the U.S. soldiers are left to sit not knowing whom to engage with. Aggressive screaming echos in the background as the camera pans to two American men in military uniforms positioned on the dusty ground on the side of a street. Guns are heard firing in every direction. The first soldier screams to his comrad, “Why aren’t you shooting??” To which he replies, “We’re not being shot at yet!”²⁴ These two men lie on the ground as enemies run past in every direction and with bullets wizzing by can not engage with the enemy because technically they have not been shot at yet and this would be a violation to the ROE. As one Army colonel who comanded in Somalia noticed, “soldiers in some situations were reluctant to fire even when fired upon for fear of leagal action.”²⁵ This is perfect example of the troubles the Rules of Engagement present.

The Battle of Mogadishu may not have been the fundamental turning point where the Rules of Engagement began to become more stringent, as they are today, but this battle is a turning point for a different reason. The ways wars are fought are ever changing throughout history. New technology is constantly being developed along with military tactics and strategy, transforming how wars are fought. Every is a learning process; figuring out how the enemy is changing, how policies have altered, and absorbing that war is not fought on large battle fields like it used to be, during the American Civil War or World War I, but rather war is fought in small operations. This is what the Battle of Mogadishu did, and for that matter so did the Vietnam War.

²⁴ Scott, *Black Hawk Down*.

²⁵ Martins, Diner, and Emswiler, “Military Law Review.” 66.

Mogadishu was a momentous turning point as it revealed what the now modern type of war is, one where the enemy insurgents are not in uniforms which creates complete chaos and extreme difficulty working within the guidelines of the ROE. In this way this battle was pivotal because it finally began to bring to light just some of the issues of working under the Rules of Engagement; one of those issues being who can you shoot and when?

In the Vietnam war, battles were fought within the jungle or on open fields, never within the cities themselves. Mogadishu was different; this was one of the first times that conflict broke out in the city and thus the ROE were hard to adapt to. The field of battle contained not only combatants and warlords, but rather all types of civilians, women, children, innocent families, and so on. Under the Rules of Engagement, U.S. soldiers were only allowed to engage with combatants or those that had weapons and fired upon them. It is here that ROE got in the way. As previously stated, the United States military has operated under Rules of Engagement for many years, but this, the Battle of Mogadishu, was one of the first conflicts that began to show some sort of publicization of ROE. It is thus even more significant to note that *Black Hawk Down* was released in 2001, the same year as the September 11th terrorist attacks. While the 16 second scene in the film showing ROE is short, it starts to make the public aware of the conditions that their country's soldiers must work under in Afghanistan²⁶, thus beginning to make them slightly knowledgeable about the Rules of Engagement after the major conflict of 9/11.

²⁶ This film makes the public aware of the ROE soldiers had to work under. At the time *Black Hawk Down* was released this short scene references ROE in Afghanistan, but as time has progressed, and now both the wars in Iraq and Afghanistan are in the past, this scene can be used in reference to ROE in both the wars in Iraq and Afghanistan.

In our modern day and age, film has become an exceptionally powerful medium and has the ability to reach massive audiences on cultural issues. Whether it is a documentary film, action, drama, or comedy, thousands to millions of individuals can be reached and informed within a matter of around two hours. The media is so prevalent in our industrialized country and thus has a profound affect on how citizens view what is being discussed in a film. This is why the film *Black Hawk Down* becomes even more important. Another such film that highlights the problem with Rules of Engagement even more is the 2013 film *Lone Survivor*, directed by Peter Berg.

The film *Lone Survivor* is a true story about the Navy SEAL team that was deployed in Afghanistan to capture the Taliban leader Ahman Shah, who was the one responsible for killing twenty Marines, villagers, and refugees who were assisting American forces. In response to these killings, a SEAL team was prepared and given a mission called Operation Red Wings. The mission was to execute a counter insurgent operation to capture the dangerous Shah. The movie plays out the real -life events and follows the four SEALs as they are inserted at their drop site in the Hindu Kush mountain region of Afghanistan where they begin their trek. Finally reaching their assigned location, the team digs in, camouflages, and attempts to get some rest before they continue. This is the smoothest their mission will get.

Woken up, stumbled upon, and discovered by two teenage goat herders and an elderly shepherd the four SEALs realize they are in grave jeopardy; both the teenagers are male and have the appearance that they work for Shah and the Taliban. This is the most important scene within the film *Lone Survivor*, it is the pivotal point in the movie and the

mission as well. The SEALs capture the three men and tie them to near by trees as they stand around deliberating what is their best option. All four men realize that their mission has been compromised, but what they do with these three native men next is extremley crucial.

The leader of the group explains:

“The way I see it, we got three options. One, we let them go, hike up.

We’ll probably be found in less than an hour.

Two, we tie them up, hike out, roll the dice.

They’ll probably be eten by fucking wolves, or freeze to death.

Three?

We terminate the compromise.”²⁷

The four men continue to deliberate the situation knowing very well that if they let the natives go the chances of themselves being captured are extremley high, yet they also know they are bound by military law and the Rules of Engagement. Fully suited up with heavy gear, radios, and ammunition the SEALs all know that Shah is down the hill and letting the elderly man and teenagers go is essentially a death sentence. The conversation contiunes between the SEALs:

“What are we gonna do?

We kill them? Huh?

Okay, we kill them, right?

What, then what?

²⁷ Berg, *Lone Survivor*.

They get found, then what?

Then what?²⁸

This scene continues to get more in depth as the emotions heighten. The music picks up and has a daunting dramatic feel to it as the camera cuts back and forth between the four SEALs, the younger teenager, the elderly man, and finally the older teenager. This older male teenager has a look of pure wrath on his face and the audience knows that if he is released by the Americans he will go straight down the mountain to Shah and the Taliban. As this scene continues it beautifully highlights the persisting problem with ROE, but it also highlights another very prevalent issue that is created by these rules.

When United States military missions go according to plan, nothing is publicized about the operation. No one receives recognition; for these men and women this is their job and they do not expect to be rewarded for a successful operation. That being said, if a mission goes drastically wrong, it seems as if the U.S. media immediately, and somehow, gets their hands on the story and United States men and women who are deployed overseas run the risk of being court marshalled for explicitly not following the Rules of Engagement. *Lone Survivor* becomes an even more powerful tool for displaying the ROE because it also addresses the issue of the media learning of a failed operation. The four SEALs end up discussing this issue:

“And then what?

You know then what.

This shit’s gonna be private?

²⁸ Ibid.

Huh? It's gonna be out there
for the whole fucking world.
CNN, okay?
'SEALs kill kids.'
That's the fucking story
forever."²⁹

This scene is pertinent to the issue revolving around the Rules of Engagement.

In the midst of extremely dangerous and high stress missions, United States soldiers are forced to stop and consider ROE before they engage with enemy insurgents, which thus puts them even more in harm's way. This scene in *Lone Survivor* is only four minutes long, but it is exceedingly powerful in the broader discussion surrounding the Rules of Engagement. In the final few minutes of this scene the SEALs are still standing in the brush of the mountains, surrounded by trees in every direction, the three detainees still tied up to trees, and the pace of the dramatic music heightens as the men continue the life-changing conversation.

“Why do these men [the natives tied to the trees] have
the right to dictate
how we do our job?
Rules of Engagement says
we cannot touch them.
I understand...

²⁹ Ibid.

That's a warrior.

Schwack them...

You want to go to Leavenworth (military prison)?

[We've] got guys in Leavenworth

doing 20 for taking

home trophy guns.

What do you think

They're gonna do

for two fucking kids

and an old fucking man?

As these highly trained men continue to argue over what to do and how to work around the rules they are under, the music has now peaked, heightening the drama of the very real life situation. The music abruptly stops and the leader of the group steps out from behind a tree as the camera cuts to him. He makes the final call, the operation is compromised; because of the Rules of Engagement, he explains, they must let these men go, even though they all know exactly what is going to ensue afterwards. In the end, because of the ROE and the SEALs not being able to do anything with these natives, all but one of the four SEALs die in a massive clash with Shah and the Taliban that follows after letting the men free. Operation Red Wings failed. This four minute film clip from *Lone Survivor* is a vital source of information for the American people to learn about the mission and, more importantly to acquire knowledge about general the problems with Rules of Engagement and the problems with how they are currently defined.

In Vietnam, U.S. soldiers faced a new type of war; guerrilla warfare. A guerrilla force is defined by the Department of Defense (DOD) dictionary of military and associated terms as “ a group of irregular, predominantly indigenous personnel organized along military lines to conduct military and paramilitary operations in enemy-held, hostile, or denied territory.”³⁰ This is a type of warfare that is definable, which makes the guerilla combatants identifiable as enemies. The Battle of Mogadishu, in Somalia, marks the turning point in this type of warfare. No longer were the enemies easily distinguishable from civilians. This was a different type of opponent, and one that the United States ended up facing in Iraq and Afghanistan, one without a uniform, who easily blended with the crowd; an unidentifiable enemy.

If combatants in conflict infringe upon the rules of war or are not wearing proper uniforms or insignia to illustrate to their enemy that they are authentic and legitimate targets while operating behind enemy lines, they then do not qualify as prisoners of war under the Geneva Conventions; thus not qualifying them as combatants under the rule of law. The Geneva Conventions

“is a body of Public International Law, also known as the Humanitarian Law of Armed Conflicts, whose purpose is to provide minimum protections, standards of humane treatment, and fundamental guarantees of respect to individuals who become victims of armed conflicts. The Geneva Conventions are a series of treaties between on the treatment of civilians, prisoners of war (POW) and soldiers who are otherwise rendered hors de combat, or incapable of fighting.”³¹

³⁰ “Department of Defense Dictionary of Military and Associated Terms.”

³¹ “Protocol II Additional To The 1949 Geneva Conventions, and Relating to the Protection of Victims of Non-International Armed Conflicts.”

In the chaos of war these laws help protect innocent civilians, and those that are captured and taken as prisoners of war, in order to make sure people are treated humanely.

However, United States soldiers have now been fighting wars where the enemy does not wear uniforms, and thus the Geneva Conventions become null and void. With a different type of war than ever seen before, soldiers are more than ever, feeling like they are sitting ducks with their operations bogged down by legal and political manuals and their hands tied behind their backs. Not being able to identify who are civilians and who are combatants means even more attention has to be paid to the Rules of Engagement, in order to make sure innocent civilians are not harmed instead of insurgents. Insurgency is defined by the Department of Defense (DOD) dictionary of military and associated terms as “the organized use of subversion and violence to seize, nullify, or challenge political control of a region. Insurgency can also refer to the group itself.”³² Thus un-uniformed insurgents are whom U.S. forces are fighting in this new form of war. Figure 4, another political cartoon, seamlessly represents the frustration that many soldiers have felt in the Iraq war, Afghanistan war, and current operations.

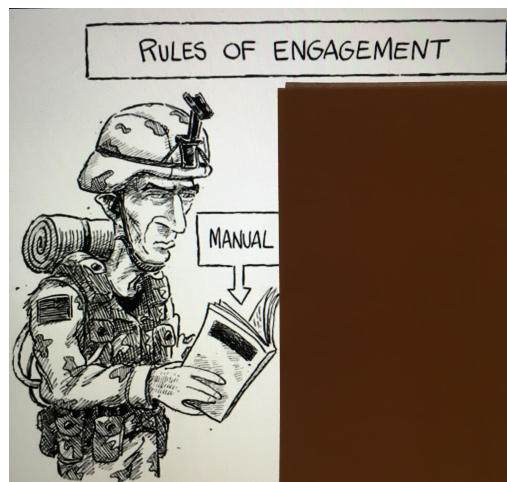


Figure 4 ROE Political Cartoon

³² “Department of Defense Dictionary of Military and Associated Terms.”

Due to this new form of insurgent enemy, Rules of Engagement have clearly become harder to work around. Because of this, mission-specific ROEs for the Iraq war were put in the form of a card for soldiers to carry around with them when deployed and on an operation. However, while soldiers may have these cards, they cannot pull them out in the middle of dangerous conflict to make sure they are following the step-by-step directions correctly. The *Operational Law Handbook* from 2015 by the judge advocate generals explains these cards:

“ROE cards are a summary or extract of mission-specific ROE. Developed as a clear, concise, and UNCLASSIFIED distillation of the ROE, they serve as both a training and memory tool; however, ROE CARDS ARE NOT A SUBSTITUTE FOR ACTUAL KNOWLEDGE OF THE ROE. In fact, the most effective distribution plan for the ROE card is probably as a diploma from attending ROE training. When confronted with a crisis in the field, the Soldier, Sailor, Airman, or Marine will not be able to consult his pocket card – he must depend upon principles of ROE internalized during the training process. Notwithstanding that limitation, ROE cards are a particularly useful tool when they conform to certain parameters: Maintain brevity and clarity, avoid qualified language, tailor the cards to the audience, keep the ROE card mission – specific, and anticipate changing rules.”³³

The last part of the above quote from the *Operational Law Handbook* is highly important to recognize. These ROE cards may be helpful, but they too are subject to change depending on how the operation pans out. Additionally, one other point is brought to light by this handbook; the fact that soldiers must go through ROE training. Regardless of the amount of training, once in the field and under an immense amount of stress, soldiers do

³³ Lee et al., “Operational Law Handbook.”

not have the ability to look at their cards; the rules must be memorized and become second nature.

Fighting this new un-uniformed enemy has created problems with the Geneva Conventions, but also with the Rules of Engagement. With one of the ROE for the Iraq war stating, “positive identification (PID) is required prior to engagement”³⁴ soldiers had difficulty attempting to identify who were civilians and who were insurgents. This places United States soldiers in harm’s way for longer periods of time before they can get the confirmation on the PID and are allowed to engage with the enemy insurgents. Fighting against not easily identifiable enemies makes the Rules of Engagement extremely hard to understand, interpret, and work around. It is because of these problems with ROE, and new forms of enemies, that the United States has seen an increase in U.S. soldier casualties.

We are beginning to see some backlash from those in the armed forces about the Rules of Engagement. President Obama put in place more stringent ROE for the wars in the Middle East and U.S. soldiers are beginning to speak out. Ryan Zinke, who helped command an assault team with SEAL Team 6, spoke about the Rules of Engagement saying, “The first people who are going to look at it (ROE) and review it are our enemies. It’s going to be a document that will be used effectively against us. This is where we either fight or go home. What’s happening is we’re losing our ability to fight overseas.”³⁵ Zinke highlights one of the most devastating problems with the United States Rules of Engagement; most of them are public and not classified. This allows the enemy to gain

³⁴ United States Army, “CJTF - U.S. ROE CARD.”

³⁵ Yates, *Restrictive Rules of Engagement = Disaster*.

access to them, learn them, and then work around them creating loops holes that do not permit United States forces to engage with them. Combine this with restrictive rules, and what you see is increased U.S. casualties.

From the first seven plus years of the war in Afghanistan (October 2001-December 2008) United States forces lost 625 soldiers.³⁶ However, the mission specific ROE that were put in place by President Obama after this time created hesitation and confusion in American fighters. With the enemy changing, in early 2009, President Obama's administration authorized counterintelligence strategy thus altering the previous Rules of Engagement. From 2009 until 2012 the United States deployed military death toll skyrocketed from 625 deaths to a staggering 1,530 lives.³⁷ Many of these new rules were put in place in order to spare civilian casualties, but countless soldiers are now saying this chain of command bureaucracy, of being able to change the Rules of Engagement, is beginning to cost American lives. During the war in Afghanistan, a powerful political cartoon about the Rules of Engagement in Afghanistan surfaced showing the public what these rules were doing to soldiers.

³⁶ Chesser, "Afghanistan Casualties: Military Forces and Civilians."

³⁷ Ibid.



Figure 5 ROE Afghanistan Political Cartoon

Films about war have become a powerful medium to display to the mass culture; they attempt to get the issue of ROE across to civilians. In some ways these military films are speaking on behalf of the soldiers when they can't actually come out and say what the films say since they are still enlisted. However, this issue is starting to gain more attention. Rules of Engagement are now mentioned in political articles in newspapers such as *The New York Times* and *The Washington Post*, and legislation has been proposed to change the blanket ROE that all United States soldiers operate under. On September 28, 2016 in the 114th Congress, a House Resolution bill was introduced. This bill, titled *H. RES. 920 Calling for Revisions to the Existing Rules of Engagement Under Operation Resolute Support in Afghanistan*, is doing just that. This bill quotes General David Petraeus, who stated in the *Wall Street Journal*, that "the Rules of Engagement mean that the indigenous Afghan and Pakistani Taliban generally get a pass."³⁸ Furthermore this

³⁸ *H. RES. 920 Calling for Revisions to the Existing Rules of Engagement under Operation Resolute Support in Afghanistan.*

House Resolution bill brings issues to the light of Congress stating, “operations against the Taliban have been undermined with strict Rules of Engagement which are confusing, contradictory, inconsistent, and politically driven.”³⁹ This bill is calling for the House of Representative to “urge the President to revise the existing Rules of Engagement in Afghanistan.”⁴⁰ Furthermore, this bill is extremely important for legal reasons, political reasons, and for operational requirements; it is of the upmost proof that there are severe problems centered around the currently defined United States’ Rules of Engagement.

House Resolution bill 920 came out in the year 2016. While U.S. Rules of Engagement have been a festering issue for numerous years, now the matter is finally being brought to a more public light. It is clear from casualty statistics, military law reports, officer reports, and countless other sources, that these rules have become a significant problem in allowing the United States Armed Forces to operate efficiently and appropriately. Throughout history, enemies have drastically changed, technology has transformed, and policies have been updated. In short, ROE are produced and imparted using a legislative model which is influenced by political factors however, rules imparted in this manner are not as helpful as they should be or could be in directing soldiers in appropriate choices about whether, when, where, or how to engage.⁴¹ These difficult decisions should signal to the Joint Chiefs of Staff (JCS) and the President that these ROE are no longer effective, and are creating more casualties than saving lives. The blanket Standing Rules of Engagement (SROE), which dictate the mission-specific ROE, have not been altered since 2005 and ROE have become more scrutinized in the eyes of

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Martins, Diner, and Emswiler, “Military Law Review.” 77.

policy and law. The enemy has changed drastically; so isn't it time to unwind the Rules of Engagement from the political fingers and the grasp of Washington D.C. in order to create understandable and operationally sound ROE for United States soldiers and do the job that they (ROE) once did and keep soldiers safe? This is the question being posed by many. Until these Rules of Engagement are altered, enemy insurgents will continue to learn them and work around the loop-holes, hesitation from American forces of when to engage will still occur, and finally, and most importantly, United States Armed Forces casualties will continue to rise. The current ROE that soldiers within the United States armed forces operate under must be changed to become less restrictive on domestic and overseas operations. While saving lives is an important part of how the United States military operates, in the line of fire, unfortunately, not all can be spared. This is the harsh and sad reality of any war. If the ROE continue to be as stringent as they currently are we going to continue to see similar patterns and problems of casualties rising and soldiers feeling like they are fighting with their hands tied behind their backs with the words of operation and ROE handbooks and manuals. This is not to say that the U.S. should abolish the Rules of Engagement, but rather that they need to be altered so that troops are no longer bogged down by the political ropes of Washington. Some form of Rules of Engagement must stay in place in today's modern warfare in order to make sure that the United States operates accordingly and falls under the LOAC and Geneva conventions. History and politics change to conform to the time, and it is now time for the United States Rules of Engagement to follow suit and do the same.

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