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Balancing Self-Defense and Mission Accomplishment in International Intervention: Challenges in Drafting and Implementing Rules of Engagement

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INTRODUCTION

The violent civil conflict in Syria continues after three years and has entered an even more dangerous phase.[1] Fighting has broken out between opposition groups with violent extremists linked to Al Qaeda emerging as the strongest of these organizations.[2] The U.S. government continues to struggle to find a way ahead that will

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1. *See* Anne Barnard, *Syrian Government Forces Seize Town in a Deep Blow to Opposition*, N.Y. TIMES, Mar. 17, 2014, at A4 ("Across Syria, insurgents are fighting one another, the humanitarian crisis is growing unabated and the government of President Bashar al-Assad is making gradual advances on several fronts."); Anne Barnard, *Syria Rebels Turn Against Most Radical Group Tied to Al Qaeda*, N.Y. TIMES, Jan. 13, 2014, at A4 (arguing that Syrian Muslims who were open to religious coexistence are becoming more and more radicalized as the war extends over three years).

2. *See* CHRISTOPHER M. BLANCHARD ET AL., CONG. RESEARCH SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE 4–5 (2014) (noting the presence and creation of many groups including the Syrian Opposition Coalition, the Supreme Military Command Council, the Islamic Front, the Syrian Revolutionaries Front, the Islamic State of Iraq and the Levant, and Jabhat al Nusra)*; see also* Ben Hubbard, *Islamist Rebels Create Dilemma on Syria Policy*, N.Y. TIMES, Apr. 28, 2013, at A1 (explaining conflicts between rebel groups such as Ahrar al-Sham, Syrian National Coalition, Syrian Liberation Front, Syrian Islamic Front, and Al Nusra Front, which is linked to Al Qaeda and is the biggest concern for the United States).

protect the innocent civilian victims among the Syrian population, lead to an end of the Assad regime, and control the potential threat posed by violent extremists.[3] Efforts to assist moderate opposition forces with non-lethal aid have failed to materially alter their strategic position, and there is no desire, or agreed upon legal basis, to intervene militarily.[4] As chemical weapons are removed and the Geneva II peace process stalls, the fighting rages on and civilian casualties continue to climb.[5] While the U.S. experience in Iraq and Afghanistan seems to have suppressed any possible interest in intervening,[6] we are perhaps only one atrocity away for the calls for intervention to be renewed.

If the United States should intervene militarily the forces carrying out the operation will be tasked with pursuing multiple U.S. foreign policy and national security objectives in a highly fluid and

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3. BLANCHARD ET AL., *supra* note 2, at 1–2, 4.

4. *See* Josie Ensor, *Syria Conflict Anniversary: Who Controls What*, THE TELEGRAPH (Mar. 14, 2014), http://www.telegraph.co.uk/news/worldnews/middle east/syria/10697998/Syria-conflict-anniversary-who-controls-what.html   (depicting which groups exert control over geographic areas of Syria); Anne Gearan, *Obama Administration Has Resumed Nonlethal Aid to Syrian Rebels*, WASH. POST (Jan. 29, 2014), http://www.washingtonpost.com/world/national-security/obama-admini stration-has-resumed-non-lethal-aid-to-syrian-rebels/2014/01/29/a697cc12-8933-11e3-916e-e01534b1e132_story.html (discussing resumption of the provision of nonlethal aid to moderate Syrian rebel groups). *See generally* Michael N. Schmitt, *The Syrian Intervention: Assessing the Possible International Law Justifications*, 89 INT'L LAW STUD. 744 (2013) (concluding that under the current circumstances, the only legal justification for military operations in Syria would be humanitarian intervention because the requirements for other accepted legal justifications— Security Council authorization, self-defense, violation of the ban on chemical weapons, and assistance to the Syrian rebels—have not been met).

5. BLANCHARD ET AL., *supra* note 2, at 1–2, 4. *See* Nick Cumming-Bruce, *Syria Speeds its Deliveries of Chemicals for Disposal*, N.Y. TIMES, Mar. 5, 2014, at A4 (detailing the status of current Syrian efforts to dispose of its chemical weapons); Louis Charbonneau, *Mediator Brahimi Says Syrian Election Now Won't Aid Peace Talks*, REUTERS (Mar. 13, 2014), http://www.reuters.com/article/2014 /03/13/us-syria-crisis-un-idUSBREA2C1VV20140313; Ensor, *supra* note 4 (noting that casualties in Syria now number more than 140,000).

6. *See* Tony Blair, *The Hand-Wringing Has to Stop. We Must Act; If We Do Not Intervene to Support Freedom and Democracy in Egypt and Syria, the Middle East Faces Catastrophe*, TIMES (London), Aug. 27, 2013, at 17 (analyzing how, despite the difficulties associated with the campaigns in Iraq and Afghanistan, the West needs to intervene in Syria).

complex operational environment.[7] Although protecting the civilian population will be the stated primary objective, those forces might be assigned additional objectives such as hastening the end of the Assad regime, disrupting and destroying extremist groups with links to Al Qaeda, and countering Iranian influence in the area.[8] The use of force in pursuit of each of these objectives carries its own policy, operational, and legal challenges. Guidance on how force may be used in pursuit of these objectives, as well as limitations imposed by the law of armed conflict, will have to be addressed in the rules of engagement issued to forces conducting the operation.

Current U.S. policy on Syria has been muddled at best.[9] Despite U.S. officials' insistence that any solution must include the removal of Assad from power, the Syrian regime appears to remain firmly entrenched in power.[10] The limited non-lethal support of moderate opposition groups has left those organizations weakened vis-a-vis extremist groups such as the Islamic Army of Iraq and Syria (ISIS) and Al Nusra Front (ANF).[11] Senior U.S. military leaders have been adamant that military options are limited and that any military responses "would not be militarily decisive, but it would commit us

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7. *See* CHRISTOPHER M. BLANCHARD & JEREMY M. SHARP, CONG. RESEARCH SERV., RL43201, POSSIBLE U.S. INTERVENTION IN SYRIA: ISSUES FOR CONGRESS 10 (2013) (explaining that, under the current proposals, the President could authorize the use of military force for a variety of reasons. Reasons could include: prevention or deterrence of the use of chemical or biological weapons of mass destruction; prevention of transfer of these weapons to terrorist groups or other state or non-state actors; degradation of Syria's capacity to use such weapons in the future; protection of the United States and its allies; and, in the worst case scenario, response to the use of weapons of mass destruction).

8. *See* BLANCHARD & SHARP, *supra* note 7, at 2 (noting that the Obama Administration will not allow the Syrian government to use chemical weapons against civilians again); *see also supra* text accompanying note 7.

9. *See* BLANCHARD ET AL., *supra* note 2, at 9–12 (discussing unclear objectives in Syria).

10. *See* Michael R. Gordon, *Kerry Offers Assurances as Syria Talks Draw Near*, N.Y. TIMES, Jan. 17, 2014, at A10 (explaining that, although the United States has not pulled back from its goal of removing Assad, as negotiations move forward there is not mutual consent on whether Assad will be involved in the new transitional government).

11. *See* Michael Weiss, *The Unraveling: How Obama's Syria Policy Fell Apart*, POLITICO MAG. (Jan. 2, 2014), http://www.politico.com/magazine/story/2014/01/how-obamas-syria-policy-fell-apart-101704.html#.Ut59RBAo7IU (arguing that the strategy taken by the United States did not do enough to support the moderate opposition groups, and ultimately led to extremist groups—namely the ISIS—gaining strength).

decisively to the conflict."[12] Military operations that lack clear objectives, or in which objectives are changed, present a major challenge for commanders in drafting and implementing rules of engagement.[13] These challenges are compounded in operations where the enemy does not distinguish himself from, and conducts attacks from within, the civilian population.[14] These challenges are not new, and past experiences might shed some light on what measures may be taken to ensure forces appropriately balance the use of force and are prepared for the operationally complex environment in which they will be operating.[15]

Senior civilian and military leaders who fail to recognize the little appreciated but nonetheless important role rules of engagement fill in a military operation do so at the risk of strategic mission failure. Rules of engagement that are perceived as failing to control or actually allowing the excessive use of force will lead to increased opposition to the mission—within the host nation as well as internationally—and will also likely contribute to further threats against the intervening force. On the other hand, rules of engagement that are perceived as being too restrictive and therefore responsible for the death and injury of members of the intervening force will likely generate or increase domestic political opposition to the mission. While these challenges appear to be polar opposites, both threaten U.S. national security and foreign policy objectives and are compounded when military forces are ordered to intervene in an internal conflict where the source of threats is unclear and where the enemy is mixed in with the civilian population.

This article will examine the challenges in balancing the use of force for self-defense and mission accomplishment by forces called upon to intervene in a civil conflict and how rules of engagement are used to address those challenges. It will begin with an overview of rules of engagement from a U.S. perspective, describing the purpose,

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12. Letter from Martin E. Dempsey, Gen., U.S. Army, to Eliot L. Engel, Rep., U.S. House of Representatives (Aug. 19, 2013), *available at* http://democrats.foreignaffairs.house.gov/113/Letter_for_Rep_Engel_19_Aug_13.pdf.

13. THE INT'L & OPERATIONAL LAW DEP'T, JUDGE ADVOCATE GEN.'S SCH., U.S. ARMY, JA 422, OPERATIONAL LAW HANDBOOK, JA 422 75 (William Johnson ed., 2013) [hereinafter OPERATIONAL LAW HANDBOOK].

14. *Id.* at 134.

15. *See infra* Part III.

development, and uses of rules of engagement by U.S. military forces.[16] Next, the article will examine the U.S. interventions in Lebanon in 1982 and1983 and Somalia from 1992 to 1994 in order to highlight some of the most common issues in drafting and implementing rules of engagement for these types of operations.[17] Those issues will then be examined in more depth and in light of the potential intervention in Syria.[18]

I.   OVERVIEW OF U.S. RULES OF ENGAGEMENT

The U.S. military 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."[19] Fundamentally, they are "the commanders' tools for regulating the use of force."[20] Rules of engagement provide guidance, and restrictions, on the use of force based not only on the law of armed conflict but also national policy and operational requirements.[21] U.S. military forces operate under permanent rules of engagement that are approved by the Secretary of Defense and promulgated by the Chairman, Joint Chiefs of Staff.[22] These permanent rules, referred to as the standing rules of engagement (SROE), are applicable to all Department of Defense (DoD) military operations, contingencies, and routine functions outside U.S. territory.[23]

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16. *See infra* Part I.

17. *See infra* Part II.

18. *See infra* Part III.

19. DEP'T OF DEF., DICTIONARY OF MILITARY AND ASSOCIATED TERMS JP 1-02 230 (Nov. 8, 2010, as amended through Dec. 15, 2013).

20. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 75.

21. *Id*. ("ROE provide a framework that encompasses national policy goals, mission requirements, and the law.").

22. *Id.* at 75–104 (detailing the SROE and Standing Rules for the Use of Force). The rules, however, are currently under review. *Id.* at 75; *see also* Thom Shanker, *Pentagon Is Updating Conflict Rules in Cyberspace*, N.Y. TIMES, June 28, 2013, at A6 (noting that an updated SROE has been drafted to include responses to cyber threats, but it has not yet been approved).

23. *See* OPERATIONAL LAW HANDBOOK, *supra* note 13, at 84 (noting that the SROE and Standing Rules for the use of Force are applicable to civil support and routine Departmental functions within U.S. territories or U.S. territorial seas as well as during law enforcement and security duties at all DoD installations).

A.   Rules of Engagement for Self-Defense

The SROE are separated into those rules which are applicable to the use of force in self-defense and supplemental measures which are available for commanders to tailor for mission accomplishment during operations.[24] Nothing in the SROE limits a commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in self-defense of the commander's unit and other U.S. forces in the vicinity in response to a hostile act or demonstrated hostile intent.[25] Force used in self-defense must be proportional, that is, "sufficient to respond decisively."[26] A proportional use of force in self-defense does not mean that it is limited in kind by that used against the force, i.e., a force attacked with small arms is not limited in using small arms to defend itself.[27] A friendly force that is attacked by small arms fire coming from within a building may call in an airstrike or use artillery fire against the enemy in order to defend itself. Of course, commanders and forces must still comply with the law of armed conflict and, while the force used "may exceed that of the hostile act or hostile intent, . . . the nature, duration, and scope of force should not exceed what is required to respond decisively."[28]

While identifying a hostile act is usually straightforward, the same cannot be said for hostile intent.[29] Just as a prosecutor must rely on what might otherwise be innocuous, circumstantial evidence in proving intent in a criminal case, soldiers will have to rely on all available, relevant information to determine whether a particular act indicates hostile intent, including available intelligence, past

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24. *See id.* at 77 ("The SROE distinguish between the right and obligation of self-defense, and the use of force for the accomplishment of an assigned mission.").

25. *Id.* at 90–91 ("Unit commanders always retain the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent.").

26. *Id.* at 91.

27. *Id.* ("Such use of force may exceed the means and intensity of the hostile act or hostile intent, but the nature, duration and scope of force used should not exceed what is required.").

28. *Id.* at 78, 89–90.

29. *See id.* at 91 (defining hostile act as "[a]n attack or other use of force against the United States, U.S. forces or other designated persons or property" and hostile intent as "[t]he threat of imminent use of force against the United States, U.S. forces or other designated persons or property.").

experience, and known enemy tactics, techniques, and procedures.[30] Determining hostile intent becomes very difficult where threats emanate from within the civilian population and might easily be mistaken for otherwise innocent behavior.[31] For example, while entering a town on patrol a military force spots an individual using a cell phone. This person might either be calling to see if he should bring home some milk or preparing to detonate an improvised explosive device in the patrol's path ahead. If the latter, his use of the cell phone could indicate hostile intent and the soldiers would be authorized to use force in self-defense. In making this determination the soldiers would likely rely on past experience of the enemy conducting attacks in this area using this tactic, intelligence indicating that the enemy is operating in this particular area and may carry out such an attack, and whether the individual's appearance and actions indicate that this activity is more likely than not a threat of an imminent use of force.[32]

This inherent right and obligation of self-defense applies not only to the unit of the individual commander but also to other U.S. forces in the vicinity.[33] The use of force to defend non-U.S. units as well as foreign nationals, including foreign civilians, when they are confronted with a hostile act or demonstrated hostile intent is referred to as collective self-defense and may be authorized only by the President or Secretary of Defense.[34] Collective self-defense of both civilian populations and partner forces will likely be an integral component during an intervention in a civil conflict and must be carefully considered during mission planning to ensure that those groups and individuals are clearly identified and appropriate authority to defend them is granted.[35]

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30. *See id*. at 82 (noting that soldiers are trained to distinguish between hostile and non-hostile intent, and providing examples of how a soldier recognizes hostile intent).

31. *Id.*

32. *Id.*

33. *Id.* at 90.

34. *Id.* at 91.

35. *Cf.* Jonathan T. Dworken, Ctr. for Naval Analyses, Rules of Engagement (ROE) for Humanitarian Intervention and Low-Intensity Conflict: Lessons from Restore Hope 5–6 (1993), *available at* http://cna.org/sit es/default/files/research/2793012000.pdf (explaining that ROE for humanitarian operations must be permissive enough to ensure operation effectiveness but restrictive enough to prevent negative incidents).

One of the more controversial changes implemented in the 2005 update to the SROE was the declaration that unit commanders could limit the use of force in self-defense by individuals assigned and acting as part of a unit.[36] While the SROE clearly state that "military members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent," it goes on to include self-defense by individuals assigned to and acting as part of a unit as a subset of unit self-defense, thereby giving commanders the authority to limit individual self-defense by members of their unit.[37] This change was seen by some as an impermissible limitation of an individual's inherent right of self-defense.[38] This restriction is also often conflated with some of the more restrictive mission accomplishment rules of engagement and blamed for causing additional casualties among U.S. forces.[39]

B.   Rules of Engagement for Mission Accomplishment and Offensive Operations

Mission accomplishment, or operational, rules of engagement supplemental measures are classified and divided into two separate types: those that require approval from the President, Secretary of Defense, or Combatant Commander prior to use; and those that are delegated to subordinate commanders for approval.[40] The SROE "are primarily used to define limits or grant authority for the use of force for mission accomplishment . . . [and] the use of force for mission accomplishment may sometimes be restricted by specific political

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36. *See* Christopher D. Amore, *Rules of Engagement: Balancing the (Inherent) Right and Obligation of Self-Defense with the Prevention of Civilian Casualties*, 1 NAT'L SEC. L.J. 39, 75 (2013) (concluding that Gen. McChrystal's ROE minimized the individuals' right to self-defense under the belief that "courageous restraint" would reduce civilian causalities when in reality it lead to more violence by the insurgents, more civilian causalities and put U.S. soldiers in greater danger).

37. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 90.

38. *See* Amore, *supra* note 36, at 61 (noting that under the new ROE, although the commander's right to unit self-defense was recognized, the individual's right to self-defense was not).

39. *Cf.* F.M. Lorenz, USMC, *Rules of Engagement in Somalia: Were They Effective?*, 42 NAVAL L. REV. 62, 70–71 (1995) (explaining how the restriction on the ROE for U.S. snipers in Somalia led to soldiers, who were standing side-by-side, having different ROE. The ROE of some soldiers permitted them to engage the enemy, while the ROE of others prohibited engagement).

40. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 78.

and military goals that are often unique to the situation."[41] The SROE as a whole are "designed to be permissive in nature."[42] That is, unless use of a specific weapon or tactic has been restricted, or requires higher-level approval, commanders "may use any lawful weapon or tactic available for mission accomplishment."[43] While subordinate commanders may further restrict permissive supplemental rules of engagement measures, they must notify the Secretary of Defense when doing so.[44] These supplemental measures typically address the use of certain weapons systems or tactics.[45]

One of the typical supplemental measures included in the rules of engagement for offensive military operations is the declaration of certain forces as hostile.[46] Once declared hostile, those forces may be engaged with deadly force at any time based solely on their status and without observing a hostile act or demonstrated hostile intent.[47] Authority to target enemy combatants based on status alone is one of the principle elements of the law of armed conflict and the fundamental difference between law in peacetime and during armed conflict.[48] To ensure that U.S. forces comply with the principle of distinction, positive identification must be obtained prior to attacking a declared hostile force.[49] Positive identification (PID) is defined as "a reasonable certainty that the proposed target is a legitimate military target."[50] Identifying and then distinguishing between declared hostile forces and the civilian population is one of the main challenges to drafting and implementing rules of engagement for interventions in civil conflicts as well as counter-insurgencies.[51]

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41. *Id.* at 93.

42. *Id*. at 86.

43. *Id*. at 93.

44. *Id*. at 86.

45. *See id.* at 76 (noting that rules of engagement can be used to restrict the use of certain weapons systems or tactics).

46. *See id.* at 91 (defining a Declared Hostile Force as "[a]ny civilian, paramilitary or military force or terrorist(s) that has been declared hostile by appropriate U.S. authority").

47. *Id*. at 77 (limiting authority to declare forces as hostile to certain leaders).

48. *See id.* ("Once a force is declared 'hostile,' U.S. units may engage it without observing a hostile act or demonstration of hostile intent.").

49. *Id.* at 103–04.

50. *Id.* at 104.

51. *Cf.* Amore, *supra* note 36, at 62–64 (noting that the ROE, in order to prevent civilian casualties, restricted the type of air support soldiers were receiving because it was difficult to distinguish between the combatants and civilians).

C. Drafting and Implementing Rules of Engagement

The drafting and submission of rules of engagement for approval is an integral component of military planning and begins once a Combatant Commander has been assigned a mission.[52] Once the Secretary of Defense approved rules of engagement and orders are received, the supported Combatant Commander will add supplemental measures, which he has the authority to approve, and send those to his subordinate component and/or joint task force commanders.[53] The component and/or joint task force commanders will, in turn, do the same and distribute to his subordinate commanders.[54] As mentioned previously, a subordinate commander may further restrict an otherwise approved weapon system or tactic by including a supplemental measure with that restriction; however, this would require notification to the Secretary of Defense.[55]

Rules of engagement belong to the commander and are fundamentally an operational responsibility.[56] While Judge Advocates are heavily involved in all aspects—drafting, requesting approval from higher authorities, assisting with implementation, training, and interpreting—the J3, or operations directorate of a joint command, should be tasked with overall responsibility for the rules of engagement.[57] For Judge Advocates to play a meaningful role in the drafting and implementation of rules of engagement, an understanding of the law of armed conflict alone is not enough. A Judge Advocate must also understand the assigned mission, the commander's intent for accomplishing this mission, and have a basic understanding of the weapons, tactics, techniques, and procedures that will be used, as well as the intelligence supporting the operation.[58]

II. RULES OF ENGAGEMENT AND U.S. MILITARY INTERVENTIONS: LESSONS LEARNED IN LEBANON AND SOMALIA

The development of the current rules of engagement has been an evolutionary process based on experiences gained during past

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52. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 95.
53. *Id.* at 95–96.
54. *Id.* at 80.
55. *Id.* at 80, 95.
56. *Id.* at 75.
57. *Id.* at 76.
58. *Id* at 75.

military operations. The U.S. experience in the civil conflicts in Lebanon and Somalia serve as two prime examples of the difficulty commanders and troops face in developing and implementing rules of engagement during an intervention. A lack of a clear mission, failure to revise rules of engagement when the tactical and/or operational situation has changed, and a lack of intelligence or understanding of the operational environment were all identified as contributing factors to the loss of life during these operations.[59] Unfortunately, lessons learned from failure and tragedy can also be forgotten. Those considering or planning an intervention in a civil conflict would be well served in reviewing the U.S. experiences in Lebanon and Somalia.

A. *The U.S. Experience in Lebanon in 1982 and 1983: Peacetime Rules of Engagement for a Civil War*

After a series of sectarian massacres in 1975, Lebanon exploded in a violent civil war.[60] As the fighting continued over the next six years, both Syria and Israel intervened, supporting those factions that were aligned with their national interests.[61] Despite this intervention, the fighting continued, and, in August of 1982, U.S. Marines entered Lebanon as part of a multi-national force.[62] The mission given to the U.S. Combatant Commander for this operation was:

> [t]o establish an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area. When directed, USCINCEUR will introduce U.S. forces as part of a multinational force presence in the Beirut area to occupy and secure positions along a designated section of the line from south of the Beirut International Airport to a position in the vicinity of the Presidential Palace; be prepared to protect U.S. forces;

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59. *See* Lorenz, *supra* note 39, at 74–75 (noting that one of the failures in Somalia was that the ROE never changed despite the change in threat); *see also* DEP'T. OF DEF., REPORT OF THE DOD COMMISSION ON BEIRUT INTERNATIONAL AIRPORT TERRORIST ACT, 134–36, (Dec. 20, 1983), *available at* www.fas.org/irp/threat/beirut-1983.pdf [hereinafter DOD COMMISSION REPORT] (noting that the failures in Lebanon included inconsistent interpretation of the mission, a failure to provide a single and clear set of ROE, and a failure to provide intelligence to the United States Multi-National Force Commander in a timely and effective manner).

60. DOD COMMISSION REPORT, *supra* note 59, at 27.

61. *Id.*

62. *Id.* at 28.

and, on order, conduct retrograde operations as required.[63]

The goal of this deployment was to separate the various domestic factions, which included the Christian Lebanese Forces, Druze militia, Shia groups, as well as the Israeli and Syrian forces, and give the Lebanese Armed Forces the time and space to reassert control.[64]

The orders from the Joint Chiefs of Staff further stated that U.S. forces serving as part of the multi-national force would not be engaged in combat and would operate under peacetime rules of engagement which authorized force only in self-defense or the defense of Lebanese Armed Forces operating alongside U.S. forces.[65] Based upon assurances from the Government of Lebanon, U.S. forces planned on entering a "relatively benign environment" where they would be protected by the Lebanese Armed Forces and the various militias had agreed to not interfere with the U.S. mission.[66]

Lacking a clearly defined mission, having no declared enemy, and operating under peacetime rules of engagement, a difficult mission only became more so as U.S. forces came under sporadic attacks from Shia and Druze militia.[67] On April 18, 1983, a suicide car bomb attack against the U.S. Embassy in Beirut killed 17 Americans, including the CIA Station Chief.[68] Following this attack, members of the U.S. multinational force were deployed to provide additional security for U.S. and British diplomatic facilities and provided expanded rules of engagement that included explicit

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63. *Id.* at 35. This mission statement was later expanded to authorize U.S. forces to patrol neighborhoods in East Beirut and again expanded to authorize those forces to provide additional security for U.S. and British diplomatic facilities. *Id.* at 37.

64. *See* John H. Kelly, *Lebanon: 1982–1984*, *in* U.S. AND RUSSIAN POLICY MAKING WITH RESPECT TO THE USE OF FORCE 85, 92–97, (Jeremy R. Azrael & Emil A. Payin eds., 1996) (explaining that U.S. troops were only present in Lebanon to assist the Lebanese Armed Forces in taking control of the area by removing Druze and Muslim militias, in addition to Palestinian and Syrian fighters). The mission statement was "[t]o establish an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area." DOD COMMISSION REPORT, *supra* note 59, at 35.

65. DOD COMMISSION REPORT, *supra* note 59, at 36.

66. *Id.* at 39.

67. *Id.* at 37–42.

68. *Id.* at 30.

language defining "attempts by personnel or vehicles to breach barriers or roadblocks" as a hostile act.[69] The forces operating at the Beirut International Airport continued to operate under the original rules of engagement, which included the following provisions:

> - When on post, mobile or foot patrol, keep a loaded magazine in the weapon, weapons will be on safe, with no rounds in the chamber.

> - Do not chamber a round unless instructed to do so by a commissioned officer unless you must act in immediate self-defense where deadly force is authorized.

> - Keep ammunition for crew-served weapons readily available but not loaded in the weapon. Weapons will be on safe at all times.[70]

As can be seen, while the rules of engagement for these forces stated that force could be used in self-defense, limitations were placed on the ability of forces to respond to any hostile act or demonstration of hostile intent.[71]

In September 1983, as Lebanese Armed Forces came under increasing attack, President Reagan authorized the use of naval gun fire and air strikes in support of Lebanese Armed Forces engaged in heavy fighting against Druze militia forces.[72] The message transmitting the approval for this use of force specifically stated "nothing in this message shall be construed as changing the mission or ROE for USMNF [U.S. Multinational Force]" and that the force authorized was considered to be in self-defense.[73] This use of force in support of the Lebanese Armed Forces also brought about a marked increase in attacks against U.S. forces.[74] Thus, "[b]y the end of September 1983, the situation in Lebanon had changed to the extent

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69. *Id.* at 45. Only after the bombing of the Marine barracks was there a request submitted to explicitly make this definition applicable to the ROE for U.S. forces operating at the Beirut International Airport. In response to the request, the Combatant Commander stated that this was already authorized under the ROE for self-defense. *Id.* at 49–50.

70. *Id.* at 49–50. To differentiate, those providing security at the airport carried a "white" ROE card, while those providing security at the diplomatic facilities carried a "blue" ROE card. *Id.* at 49.

71. *Id.* at 49–50.

72. *Id.* at 45–46.

73. *Id.* at 46.

74. *Id.* at 42.

that not one of the initial conditions upon which the mission statement was premised was still valid[,] [t]he environment clearly was hostile."[75] On October 23, 1983, 241 Marines were killed when a suicide bomber rammed his vehicle through the gate and into the barracks at the Beirut airport.[76] In February 1984 the Marines were withdrawn from Lebanon and the civil conflict exploded.[77]

In the aftermath of the October 23, 1983 attack, the Department of Defense established a commission to investigate the circumstances of the attack.[78] The fundamental factor identified by the commission in the success of the attack was the failure of the chain of command to recognize the change in the operational environment and security situation from those on which the mission had been planned.[79] While the threat to the U.S. multi-national force had grown and its role expanded, security measures, including the rules of engagement, did not change.[80] Causing, or at least contributing to this failure, was a lack of intelligence and differing interpretations within the chain of command as to the mission assigned to the force.[81]

B. Somalia from 1992 to 1994: Restricting the Rules of Engagement in the Face of an Increasing Threat

Most people are familiar with the U.S. mission in Somalia as that portrayed in the movie *Black Hawk Down*.[82] While viewers were able to get a very real sense of the difficult operational environment facing U.S. forces, the movie represented only one operation in the broader U.S. intervention in the civil conflict and humanitarian crisis that had engulfed the country. Fighting between armed clans throughout 1991 had led to a humanitarian crisis in Somalia with millions at risk of starvation.[83]

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75. *Id.* at 40.
76. *Id.* at 32–33.
77. Kelly, *supra* note 64, at 103.
78. DOD COMMISSION REPORT, *supra* note 59, at 19.
79. *Id.* at 135–36.
80. *Id.* at 135.
81. *Id.* at 136.
82. BLACK HAWK DOWN (Revolution Studios 2001).
83. Jihan A. Kahssay, Comment, *Lessons Learned from Somalia: Returning to a Humanitarian-Based Humanitarian Intervention*, 19 U.C. DAVIS J. INT'L L. & POL'Y 113, 114–15 (2012).

Attempts by the United Nations and relief organizations to provide humanitarian assistance were unsuccessful due to the violence.[84] Ports, airfields, and relief ships were attacked, large payments were demanded from any groups attempting to deliver aid, and shipments were seized by armed bandits and groups loyal to the clans.[85] Even the small contingent of UN observers and security personnel, deployed to observe an agreed upon ceasefire and assist in the aid efforts, were attacked, having their weapons and vehicles seized.[86] Seeing the need for a more robust security element, the UN Security Council authorized action under Chapter VII of the U.N. Charter and created the Unified Task Force (UNITAF) Somalia.[87] UNITAF was compromised of forces from several UN member states with the largest portion of them being from the United States.[88] The United States exercised joint command and control of all UNITAF forces while the original United National Operation in Somalia (UNOSOM) mission maintained responsibility for all political aspects and humanitarian assistance to Somalia.[89] Once a secure environment was established by UNITAF, command of the deployed military forces would also be turned over to the United Nations.[90]

U.S. forces were initially deployed to Somalia in December 1992 for Operation Restore Hope as part of UNITAF.[91] Operation Restore Hope was given a mission that was "narrow and clearly defined: to provide security for the delivery of relief supplies."[92] This seemingly simple mission, however, was not so easy to implement in the chaotic environment of Somalia.[93] In addition to the armed clans, Somali men had formed gangs in order to steal relief supplies and anything

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84. *Id.* at 121–22.

85. U.N. Operations in Somalia I, Background http://www.un.org/en/peacekeeping/missions/past/unosom1backgr2.html (last visited Mar. 7, 2014) [hereinafter *Background*].

86. *Id.*

87. *See* S.C. Res. 794, ¶ 8–10, U.N. Doc. S/RES/794 (Dec. 3, 1992) (demanding an end to International Humanitarian Law violations, authorizing establishment of unified command and control of offered forces, and authorizing action under Chapter VII and VIII to include use of such measures as may be necessary to ensure strict implementation of the arms embargo established by ¶ 5 of UN Security Council Resolution 733 (1992)).

88. *Background*, *supra* note 85.

89. *Id.*

90. *Id.*

91. Lorenz, *supra* note 39, at 62–63.

92. *Id.* at 63.

93. DWORKEN, *supra* note 35, at 5–6.

else of value, while others armed themselves to protect their families from the clans and gangs.[94] Additionally, the clans and other groups had mounted crew served weapons in the beds of small trucks and were using these "technical vehicles" to attack relief convoys as well as rivals. Large groups of unarmed people, including children, would swarm UNITAF patrols, stealing food and other items thought to be of value from the vehicles and forces.[95] Distinguishing between those who were threats—those merely stealing things—and those who were merely trying to protect themselves and their families, was challenging at best.[96]

In order to provide guidance for the use of force in this challenging and confusing environment, innovative language was developed to deal with both the large numbers of armed men, technical vehicles, and crew served weapons.[97] The rules of engagement developed by U.S. Central Command was based on its standing peacetime rules of engagement and authorized the use of force in self-defense in response to a hostile act or hostile intent, stating "[h]ostile fire may be returned effectively and promptly to stop a hostile act."[98] The rules of engagement also identified crew-served weapons as a threat to UNITAF forces and the relief effort, whether or not the crew demonstrated hostile intent, and authorized "all necessary force to confiscate and demilitarize crew served weapons."[99] Armed individuals were treated differently under the rules of engagement, which stated they *may* be considered a threat to UNITAF and the relief effort, whether or not the individual demonstrates hostile intent, and that commanders were "authorized to use all necessary force to disarm individuals."[100]

Having brought the violence under control, UNITAF relinquished command and control of the military mission to UN

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94. *Id.* at 6.

95. *Id.*

96. *See id.* ("[S]oldiers faced a complex security environment in which to decide whether—and when—to use force.").

97. *See* DENNIS P. MROCZKOWSKI, RESTORING HOPE: IN SOMALIA WITH THE UNIFIED TASK FORCE, 1992-1993 26 (2005) (explaining how the ROE made special note of vehicle mounted crew-served weapons, also known as "technicals").

98. DWORKEN, *supra* note 35, at 9–10.

99. Lorenz, *supra* note 39, at 64.

100. *Id.*

Operations in Somalia II (UNOSOM II) in May 1993.[101] UNOSOM II was also given an expanded mission pursuant to UN Security Council Resolution 814 and included providing humanitarian assistance, promoting national reconciliation, and completing the disarmament process, among others.[102] A relatively small number of U.S. military forces remained under the command of UNOSOM II while the bulk of the forces transitioned to a separate, U.S.-only command, U.S. Forces Somalia (USFORSOM).[103] Although there had been some fear among the U.S. forces that the UN would implement more restrictive rules of engagement, the UNOSOM II Commander largely adopted the same rules of engagement under which UNITAF had been operating.[104]

Shortly after UNOSOM II assumed command, the security situation in Mogadishu deteriorated as the armed clans began to test the UNOSOM II forces.[105] By the end of May 1993, the UNOSOM II Commander issued a "frag order" that declared armed militias, technical vehicles, and crew served weapons as threats which could be "engaged without provocation."[106] This order, in allowing the use of force without being exposed to a hostile act or hostile intent, essentially declared the armed militias, technical vehicles, and crew served weapons as hostile and significantly expanded the authority of UNOSOM II forces to use deadly force.[107]

In addition to transferring military command from UNITAF to UNOSOM II, UN Security Council Resolution 814 also increased the scope of the mission in Somalia.[108] Besides providing security for humanitarian assistance, UNOSOM II was tasked with completing disarmament of the armed clans.[109] On June 5, 1993, UN forces raided a weapons storage area belonging to the clan led by

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101. S.C. Res. 814, ¶¶ 10, 14, U.N. Doc. S/RES/814 (Mar. 26, 1993) [hereinafter Resolution 814].

102. *Id.* ¶¶ 3–4.

103. KENNETH ALLARD, SOMALIA OPERATIONS: LESSONS LEARNED 51–52 (1995). The U.S. forces under UNOSOM II were largely providing logistical support. The primary responsibility of USFORSOM was to serve as a Quick Reaction Force for UNOSOM II. *Id.*

104. Lorenz, *supra* note 39, at 65.

105. *Id.* at 65–66.

106. *Id.* A "frag order" is a supplemental order to an operational plan that is usually implemented on short notice. *Id.*

107. *Id.* at 66.

108. *See* Resolution 814, *supra* note 101 (requesting that the Secretary-General provide various humanitarian assistance to the people of Somalia).

109. *Id.* ¶ 7.

Mohammed Farah Aidid, killing two members of his clan during the operation.[110] Attacks against UNOSOM II forces increased with a Somali mob attacking and killing 24 Pakistani soldiers.[111] In response, the Security Council called for the arrest and trial of those responsible for the attack and UNOSOM II increased its disarmament efforts.[112]

U.S. forces assigned to USFORSOM and Task Force Ranger were deployed in Mogadishu in support of UNOSOM II efforts to both disarm the clans and capture Aidid and others responsible for the attacks on the UN forces.[113] These efforts included the October 3, 1993 U.S. Special Operations raid portrayed in the movie *Black Hawk Down* during which eighteen U.S. military members were killed and more than seventy were injured.[114] The number of Somali dead as a result of this operation has been estimated at anywhere from several hundred to more than a thousand.[115]

Later that month, U.S. forces were reinforced with a Marine contingent as the security situation continued to deteriorate.[116] U.S. forces were largely confined to their compounds where they were often the target of small arms and mortar fire.[117] To protect against these threats, Marine snipers were authorized, pursuant to the UNOSOM II rules of engagement as amended by the frag order, to target crew served weapons regardless of whether they demonstrated a hostile act or hostile intent.[118] This was essentially a change of interpretation of the existing rules of engagement, which treated the crew served weapons as "declared hostile" forces and seemed to be effective in reducing the threat posed by these weapons.[119]

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110. Lorenz, *supra* note 39, at 66.

111. *Id.*

112. *Id.*

113. *See* ALLARD, *supra* note 103, at 51–52 (explaining that Task Force Ranger was compromised of U.S. Special Operations Forces under a separate command reporting directly to U.S. Central Command).

114. *Id.* at 17; BLACK HAWK DOWN (Revolution Studios 2001).

115. RICHARD W. STEWART, UNITED STATES ARMY IN SOMALIA, 1992-1994, 23 (2003) *available at* http://www.history.army.mil/brochures/Somalia/Somalia.htm.

116. Lorenz, *supra* note 39, at 67–68.

117. *Id.* at 68.

118. *Id.*

119. *Id.*

In January 1994, Marine snipers engaged a Somali on a technical vehicle and appeared to have killed him.[120] A short time later, Somalis came to a U.S. checkpoint and stated that the Marines had killed a pregnant woman.[121] Although a body was never found and an investigation was unable to confirm whether the snipers had killed a woman, it was widely reported that this had, in fact, happened.[122] Additionally, it was reported that the Marines had been appropriately acting within the rules of engagement at the time.[123] Despite this, the rules of engagement were changed and forces were no longer allowed to target technical vehicles and crew served weapons absent a hostile act or hostile intent.[124] The change on the streets of Mogadishu was immediate as crew served weapons once again became a common sight.[125]

The U.S. experience in Somalia had significant consequences. All U.S. and UN forces were withdrawn by March 1994 and the conflict in Somalia intensified, with implications from this continuing to this day.[126] The U.S. Secretary of Defense at the time, Les Aspin, resigned in December 1993, in part to accept responsibility for not approving the deployment of requested tanks and armored vehicles to Somalia, which many believed might have lowered the death toll of the October 3 raid had they been available.[127] Finally, the public outrage over the scenes of the bodies of U.S. military members being dragged through the streets of Mogadishu led to a scaling back of U.S. involvement throughout the region and refusal to intervene in the Rwandan genocide in 1994.[128]

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120. *Id.* at 69.

121. *Id.*

122. *Id.*

123. *Id.* at 69–70.

124. *Id.* at 70.

125. *Id.*

126. Kahssay, *supra* note 83, at 124.

127. Eric Schmitt, *Study Faults Powell Aides on Somalia*, N.Y. TIMES, Oct. 1, 1995, at A13.

128. *See PBS Frontline: Ambush in Mogadishu* (PBS television broadcast Nov. 1, 2001) (transcript available at http://www.pbs.org/wgbh/pages/frontline/shows /ambush/etc/script.html) (quoting Walter Clark, Deputy Special Envoy) ("The ghosts of Somalia continue to haunt U.S. policy. Our lack of response in Rwanda was a fear of getting involved in something like a Somalia all over again.").

III.   RULES OF ENGAGEMENT: COMMON ISSUES AND LESSONS
        LEARNED

The experiences described above, as well as the recent experiences in Afghanistan and Iraq, continue to illustrate the difficulty in drafting and implementing rules of engagement for humanitarian intervention, stability, and counter-insurgency operations. Those operations have common characteristics such as a fluid operational environment with no clear enemy and a threat that is hidden within the civilian population, thus requiring a careful and limited use of force. Balancing that force in order to accomplish the desired political and military objectives while also ensuring military forces may adequately defend themselves is the core challenge in drafting and implementing effective rules of engagement for these operations.

A.   *What is the mission? Forces must be given clear mission objectives that are understood by all in the chain of command.*

Effective rules of engagement are dependent on clearly defined national policy and military objectives that are understood by all within the chain of command. Rules of engagement encompass not only the law of armed conflict but also national policy and operational requirements.[129] Thus, rules of engagement are a critical element in ensuring that the force used supports the operational requirements necessary to accomplish those national policy objectives for the mission set forth by the President and Secretary of Defense.

In traditional conflicts between the armed forces of opposing states these policy objectives were fairly clear: bring about the unconditional surrender of Nazi Germany and Imperial Japan, remove Iraqi military forces from Kuwait and restore Kuwaiti sovereignty, remove Saddam Hussein from power.[130] The operational requirements for accomplishing this policy objective would then focus on applying overwhelming force, as constrained by the law of armed conflict, to bring about the enemy's partial or complete

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129. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 73; *see also* Amore, *supra* note 36, at 47 (discussing the purpose of ROE).

130. *See generally* MAURICE MATLOFF, STRATEGIC PLANNING FOR COALITION WARFARE, 1943–1944 18 (Ctr. of Mil. Hist. 1994) (1959) (discussing the concept of unconditional surrender).

submission as quickly as possible.[131] The rules of engagement would declare members of the enemy military forces, along with other lawful military objectives, as hostile thereby making them subject to attack at any time and any place.

Clear national policy objectives are particularly important in ensuring compliance with the law of armed conflict principles of military necessity and proportionality. The use of force during a conflict is limited to those acts necessary to accomplish a legitimate military objective.[132] A use of force that does not contribute to the defeat of the enemy has no military purpose and would be prohibited by the principle of military necessity.[133] In nontraditional conflicts where the defeat of the enemy is measured by something other than unconditional surrender or regime change, victory is measured by the national policy objective.[134] Having known, clear objectives is important in ensuring that the use of force contributes to accomplishing the overall objective and defeat of the enemy. Proportionality balancing in military operations that do not have a clear objective is also very difficult. Assessing whether the military advantage gained outweighs the incidental civilian casualties caused by the use of force depends on being able to understand how that operation contributes to the defeat of the enemy. Thus, both the principle of military necessity and the principle of proportionality have a direct relationship to, and are dependent on, having clear national policy objectives for the operation.

Rules of engagement for a mission with the objective of the unconditional surrender of the enemy or changing the enemy regime is very different than that for a humanitarian intervention or counter-insurgency mission. While additional limitations not required by the law of armed conflict may be placed on the use of force based on national policy and operational requirements, rules of engagement for missions such as these will be permissive in nature.[135] The permissive rules of engagement for the former are justified in a utilitarian approach to the law of armed conflict that interprets military necessity in the broadest possible manner.[136] As Walzer notes, this

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131. Charles J. Dunlap Jr., *International Law and Terrorism: Some "Qs And As,"* 2002-NOV ARMY LAW. 23, 28 (2002).

132. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 104.

133. *Id*. at 11.

134. J. Boone Bartholomees, *Theory of Victory*, U.S. ARMY WAR C. Q.: PARAMETERS, Summer 2008, at 25, 28.

135. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 78.

136. MICHAEL WALZER, JUST AND UNJUST WARS, 129–131, 144 (2d ed. 1992).

utilitarian interpretation of military necessity is limited only by a prohibition on wanton violence and those specific acts prohibited by the law of armed conflict.[137] Thus, almost any act within those limitations can be justified as bringing a quicker end to the hostilities and is, therefore, compliant with the principle of necessity.[138] Such an approach has been favored by the United States and other states in past armed conflicts but is not suited to the majority of modern conflicts.

In today's conflicts, national policy objectives are not so clear. Take for example Operation Odyssey Dawn, the U.S. portion of the NATO mission in Libya in 2011.[139] UN Security Council Resolution 1973 established a no-fly zone over Libyan airspace and authorized member states "to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack."[140] Neither UNSCR 1973 nor any other UNSC resolution mentioned regime change as an objective or authorized actions to oust Qadhafi from power.[141] However, in responding to House Resolution 292, President Obama stated that removing Qadhafi from power was an objective of both the United States and the international community and that accomplishing the stated military objectives of stopping attacks on civilians and preventing the continued military advances of Libyan forces would "pave the way" for Qadhafi's departure.[142] While, on its face, the military objective was limited to the protection of civilians from attacks by Libyan forces, placing that objective in the context of the broader national policy objective of regime change likely made rules of engagement for military operation more permissive than they would be absent the regime change objective, allowing a more aggressive use of force to destroy those Libyan forces standing between the rebels and the end of the Qadhafi regime.

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137. *Id.* at 129.

138. *Id.*

139. Robert M. Danin, *Libyan Strikes: Clearer Objectives Needed*, COUNCIL ON FOREIGN REL. (Mar. 20, 2011), http://www.cfr.org/libya/libyan-strikes-clearer-objectives-needed/p24432.

140. S.C. Res. 1973, ¶ 4, U.N. Doc S/RES/1973 (Mar. 17, 2011).

141. *Id.*

142. Scott Wilson, *Obama Says Hill's Approval Not Needed for Libya Action*, WASH. POST, June 15, 2011, at A01; THE WHITE HOUSE, UNITED STATES ACTIVITIES IN LIBYA (2011), *available at* http://www.washingtonpost.com/wpsrv/politics/documents/united-states-activities-libya.html.

Establishing a clear national policy objective for any intervention mission in Syria would likely prove even more challenging. There are multiple U.S. national security and foreign policy interests at stake in Syria today,[143] thus it is unlikely that the objective of a U.S. intervention would be limited to protection of the civilian population. President Obama and other U.S. leaders have already stated that the resolution of the conflict in Syria must include Assad leaving power.[144] As in Libya, even if not stated explicitly, U.S. military action to protect the civilian population would also undermine Assad's military power and would likely be applied in such a way as to hasten his downfall.

Perhaps the most vital U.S. national policy objective to be furthered in any U.S. intervention would be to disrupt and destroy Al Qaeda-associated forces present in Syria. Both the Islamic State of Iraq and Syria (ISIS) and the Al Nusra Front (ANF) appear to have links to Al Qaeda (AQ), or at least share a common ideology, and both of these groups appear to be gaining strength.[145] Additionally, reports have surfaced that numerous European and U.S. citizens have joined the ISIS and/or ANF.[146] There are fears that these individuals will return to their home countries, radicalized and trained, and will carry out attacks.[147] As in Afghanistan, any U.S. mission to protect

143. BLANCHARD & SHARP, *supra* note 7, at 12; *Cf.* Scott Wilson, What Are the Pros and Cons of Intervention in Syria for Obama Administration?, WASH. POST (Apr. 25, 2013), http://www.washingtonpost.com/politics/what-are-the-pros-and-cons-of-intervention-in-syria-for-obama-administration/2013/04/25/0ad5694a-ade9-11e2-8bf6-e70cb6ae066e_print.html.

144. President Obama and Prime Minister Erdogan of Turkey, Joint Press Conference at the White House Rose Garden (May 16, 2013), *available at* http://www.whitehouse.gov/the-press-office/2013/05/16/joint-press-conference-pre sident-obama-and-prime-minister-erdogan-turkey;Sec'y of State John Kerry, Opening Remarks Before the House Foreign Affairs Committee (Sept. 4, 2013), *available at* http://www.state.gov/secretary/remarks/2013/09/213787.htm; Interview by Reena Ninan with Hillary Clinton, Sec'y of State (Apr. 1, 2012), *available at* http://www.state.gov/secretary/20092013clinton/rm/2012/04/187352.htm.

145. *See* Anne Barnard, *Syria Rebels Turn Against Most Radical Group Tied to Al Qaeda*, N.Y. TIMES, Feb. 3, 2014, at A4 (describing radical groups in Syria).

146. Michael Birnbaum, *Flow of Europeans into Syria a Concern*, WASH. POST, Dec. 6, 2013, at A09; Alex Spillius, *Number of Foreign Fighters in Syria Nearly Doubles*, THE TELEGRAPH (Dec. 17, 2013), http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10523203/Number-of-foreign-fighters-in-Syria-nearly doubles.html.

147. Maria Abi-Habib, *European Spies Reach Out to Syria*, WALL ST. J., Jan. 15, 2014, at A1; Spillius, *supra* note 146.

the Syrian population would be undertaken alongside direct action counter-terrorism missions against AQ and associated forces.[148]

Another likely U.S. national policy objective would be countering the role of Iran and its surrogates in Syria. It has been reported that both Hezbollah and Iranian Qods Force operatives are playing an increasing role in the fight and are vital to Assad remaining in power.[149] Both have been linked to attacks against the United States, including the bombing of the Marine Barracks in Beirut in 1983 and supporting attacks against U.S. forces in Iraq, and continue to challenge broader U.S. interests.[150] Even if countering these forces is not explicitly included as an objective, U.S. forces would be forced to deal with their activities, just as they did in Iraq.[151]

Having a stated mission objective of protecting the civilian population while not explicitly recognizing the broader U.S. foreign policy objectives of removing Assad from power, disrupting Al Qaeda associated forces, and countering Iranian and Iranian surrogate activities would make the development and implementation of rules of engagement for such a mission difficult. The operational requirements and use of force necessary to accomplish these various objectives differ. Commanders must have a clear understanding of the assigned national policy objectives to ensure that the appropriate rules of engagement are drafted and implemented to guide the use of force to accomplish the mission and allow for self-defense of those forces deployed.

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148. BLANCHARD & SHARP, *supra* note 7, at 2.

149. Jonathan Stevenson, Op-Ed., To Oust Assad, Pressure Hezbollah, N.Y. TIMES, July 19, 2013, at A25; Mark Landler, *On Iran and Syria, Tests of Diplomacy Intertwine*, N.Y. TIMES, Dec. 19, 2013, at A12.

150. CASEY L. ADDIS & CHRISTOPHER M. BLANCHARD, CONG. RESEARCH SERV., R41446, HEZBOLLAH: BACKGROUND AND ISSUES FOR CONGRESS 1 n.2 (2011); Background Briefing by Senior Administration Officials On Iran, the IRGC, and Hezbollah's Increased Terrorist Activity Worldwide, U.S. Dep't of State (May 31, 2013) *available at* http://www.state.gov/r/pa/prs/ps/2013/05/210145.htm.

151. *See* Michael R. Gordon & Ben Hubbard, Qaeda-Linked Group Is Seen Complicating the Drive for Peace in Syria, N.Y. TIMES, Oct. 22, 2013, at A10 (explaining Iran's involvement in sending arms and personnel to assist Assad).

B.   *Who is the enemy? Identifying and declaring forces as hostile—challenges in the use of force offensively in civil conflicts.*

One of the primary challenges in drafting rules of engagement for interventions in civil conflicts is identifying those forces that are hostile. Rules of engagement "in the traditional context were uncontroversial and simple to interpret: soldiers killed soldiers and protected innocent civilians."[152] This is no longer the case in modern conflicts, as experienced by the United States in Lebanon, Somalia, Iraq, and Afghanistan, and would also not be the case in an intervention in a civil conflict like Syria.[153]

In conventional state-on-state conflicts, opposing military forces are lawful military targets and are declared hostile by the rules of engagement.[154] This allows the use of force, as otherwise constrained by the principles of the law of armed conflict, wherever and whenever those opposing military forces are found.[155] Identifying those forces in such conflicts had been straightforward as they distinguished themselves from the civilian population—they wore uniforms and operated in identifiable formations.[156] Properly applied, the use of force in this manner allows armed forces to eliminate threats at the time and in the manner that gives them the greatest advantage—and places them at the least risk. This also allows the attacking forces to use force at the time and place so as to minimize civilian casualties. Requiring forces to wait until they are attacked, or about to be attacked, places them at greater risk, one that is compounded when there is a lack of intelligence or unfamiliarity with the groups involved in the conflict and where the enemy carries out attacks from within the civilian population.[157]

The difficulty in distinguishing between enemy combatants and civilians is one that will be faced in almost any intervention operation. "When those who are fighting . . . melt into the civilian population and persons who appear to be civilians periodically engage in hostilities, determining who is a legitimate target becomes

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152. Laurie Blank & Amos Guiora, *Teaching an Old Dog New Tricks: Operationalizing the Law of Armed Conflict in New Warfare*, 1 HARV. NAT'L SEC. J. 45, 58 (2010).

153. *Id.* at 47 (arguing that in modern conflict a lack of clarity exists regarding the operational mission and identifying the enemy).

154. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 16.

155. *Id.*

156. *Id.*

157. Blank & Guiora, *supra* note 152, at 64–66.

nearly impossible."[158] One of the primary purposes of rules of engagement is to ensure that the use of force complies with the law of armed conflict.[159] On its face, this would appear to be simple. There are combatants and civilians. Combatants may be targeted and civilians must be protected.[160]

By their very nature, however, civil conflicts are marked by large numbers of civilians taking up arms and participating in the hostilities.[161] The issue that the rules of engagement must address then is when those civilians may be targeted. The law of armed conflict permits the use of force against civilians "for such time as they take a direct part in hostilities."[162] If the assigned mission calls for the use of force to accomplish the mission, then commanders must ensure that the rules of engagement address and identify what constitutes direct participation.[163] While all would agree that detonating an improvised explosive device would constitute direct participation, there is no agreement when that direct participation actually begins.[164] Where in the chain of events leading up to the actual detonation does direct participation begin? Raising money to buy the components? Buying the components? Constructing the device? Instructing others on how to construct the device? Storing the device for later use? Transporting the device to the location where it will be used? Emplacing the device? What if, instead of emplacing the device himself, the individual pays a child to emplace the device?

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158. *Id.* at 48.

159. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 76.

160. *Id.* at 12.

161. Michael N. Schmitt, *The Interpretive Guidance on the Notion of Direct Participation in Hostilities: A Critical Analysis*, 1 HARV. NAT'L SEC. J. 5, 6 (2010).

162. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), art. 51, June 8, 1977, 1125 U.N.T.S. 3.

163. Blank & Guiora, *supra* note 152, at 66–67 (noting that "the expanding range of persons involved in armed conflict" poses challenges to soldiers seeking to comply with the law of armed conflict).

164. *See* Int'l Comm. of the Red Cross, 31st International Conference of the Red Cross and Red Crescent, Geneva, Switz., Nov. 28–Dec. 1, 2011, *International Humanitarian Law and The Challenges of Contemporary Armed Conflicts*, 43–44, 31IC/11/5.1.2 (Oct. 2011) (describing what conduct amounts to direct participation).

Is that child now directly participating and therefore a lawful target?[165]

Not only is this difficult factually, but there is widespread disagreement on where to draw the legal lines on what is direct participation. The International Committee of the Red Cross (ICRC) convened a group of experts over the course of five years in an attempt to provide guidance on what constitutes direct participation in hostilities.[166] This effort ended in a very public disagreement with several of the experts asking that their names not be listed as participants in the final report and publishing articles highlighting their disagreements with the ICRC's conclusions.[167] Other scholars have called for a change to the current conceptualization of who is a lawful target, replacing the categories of combatant and civilian with ones that are more relevant and specific to today's conflicts.[168]

The challenge of identifying hostile forces for an intervention in a situation like Syria would be especially daunting. The opposition forces fighting against the Syrian regime include groups with fluid membership and shifting allegiances.[169] The Syrian regime is using not only the Syrian armed forces, but has armed and formed civilians into paramilitary organizations, and is supported by surrogates such as Hezbollah and Iranian Qods forces.[170] Foreign fighters from the region as well as from Europe and the United States have traveled to Syria to join in the fight.[171] Groups fighting on both sides have long

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165. *See* DEXTER FILKINS, THE FOREVER WAR 157 (2008) (providing an example of participation).

166. Nils Melzer, Int'l Comm. of the Red Cross, Interpretive Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law (Feb. 2009) *available at* http://www.icrc.org/eng/assets/files/other/icrc-002 0990.pdf.

167. Schmitt, *supra* note 161, at 6.

168. Blank & Guiora, *supra* note 152, at 46; Rosa Brooks, *War Everywhere: Rights, National Security Law, and the Law of Armed Conflict in the Age of Terror*, 153 U. PA. L. REV. 675, 757 (2004).

169. *See* Ken Sofer & Juliana Shafroth, The Structure and Organization of the Syrian Opposition, CTR. FOR AM. PROGRESS (May 14, 2013), *available at* http://www.americanprogress.org/wp-content/uploads/2013/05/StructureAndOrganizationSyrianOpposition-copy.pdf (describing Syrian opposition forces).

170. Julian Borger, Iran and Hezbollah 'Have Built 50,000-Strong Force to Help Syrian Regime,' GUARDIAN, Mar. 14, 2013, http://www.theguardian.com/world/2013/mar/14/iran-hezbollah-force-syrian-regime.

171. Birnbaum, *supra* note 146; Spillius, *supra* note 146.

histories of using terrorism to target U.S. interests, making it likely that U.S. forces would come under attack from multiple groups.[172]

The rules of engagement for an operation that included an objective of disrupting and/or defeating al-Qaeda-associated forces would have to address which individuals would be declared hostile, including whether this would be based on membership in the organization alone, making a functional analysis of that individual's participation necessary.[173] This, of course, would require knowledge of the organization and sufficient intelligence to distinguish whether that individual is a member of the organization or a civilian, i.e., is the person delivering the electronic components an ISIS logistician or merely the UPS deliveryman.[174] Limitations, based on the policy objectives and operational requirements, would then be placed on how and when that force may be used. Would airstrikes and unobserved indirect fire be permitted? What standards would be used to ensure that civilians aren't present or, if so, how civilian casualties would be minimized? Who would have the authority to approve strikes on targets where civilians might be present? Would the rules of engagement allow the use of force against otherwise protected targets, such as hospitals, mosques, and schools that are being used for military purposes? If so, who would have authority to approve such strikes? There would be perhaps no other operational environment more challenging for U.S. forces to intervene.

C. *Self-defense and protecting the civilian population: challenges in balancing the use of force and identifying threats*

Unlike the mission accomplishment rules of engagement discussed above which authorize the use of force against declared hostile forces at any time and any place, self-defense rules of engagement authorize and guide the use of force in response to hostile acts or demonstrated hostile intent.[175] Commanders have the obligation, and authority, to use all necessary means available and to take all appropriate action in self-defense of the commander's unit as

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172. *See* ADDIS & BLANCHARD, *supra* note 150, at 1 (citing Hezbollah's history as an example).

173. *See* OPERATIONAL LAW HANDBOOK, *supra* note 13, at 21–22 ("[U.S. military protocol] relies on a case-by-case approach to organized armed groups and individuals").

174. *Id*. at 21–22.

175. *See id.* at 77 ("[M]ilitary members may exercise individual self-defense in response to a hostile act or demonstrated hostile intent.").

well as other U.S. forces in the vicinity.[176] Individual military members also have the inherent right to use force in response to a hostile act or demonstrated hostile intent, although this may be limited when operating as part of a unit.[177]

The use of force in an intervention into a civil conflict will most likely arise from situations involving self-defense. In operations where the use of force is limited to self-defense forces need not wait until they are actually attacked before using force but may not attack individuals or groups that merely present a potential threat.[178] Identifying threats to the force in an environment where hostile forces do not distinguish themselves from, and may even be part of, the civilian population that the military forces are tasked with protecting creates a "tension between respect for IHL and protecting the unit" and is "the fundamental challenge in new warfare."[179]

Rules of engagement that are permissive in nature, liberally allowing the use of force in self-defense, have the potential for causing unintended harm to those civilians who find themselves in the area of the hostile act or hostile intent.[180] While the use of force in self-defense must be proportionate, the range of response permitted under the law of armed conflict is quite wide, with many military leaders favoring the use of overwhelming force when confronted with a hostile act or hostile intent.[181] This approach reflects an emphasis on a military-utilitarian perspective of the use of force over a humanitarian perspective and places a greater value on protecting the lives of military forces over those of others in the area of operations. This is particularly problematic during an intervention into a civil conflict where protection of the civilian population and avoidance of civilian casualties is vital to mission success.

This concept of responding with overwhelming force to hostile acts is exemplified by an account of the response by U.S. forces to a

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176. *Id.* at 90.

177. *Id.*

178. *Id.* at 77.

179. Blank & Guiora, *supra* note 152, at 58–59.

180. WALZER, *supra* note 136, at 129–30.

181. DAVID G. BOLGIANO & JAMES M. PATTERSON, FIGHTING TODAY'S WARS: HOW AMERICA'S LEADERS HAVE FAILED OUR WARRIORS 113 (2012) (quoting Major General Gary L. Harrell (Ret.)) ("[T]he only tactical solution when confronted with an imminent threat of death or serious bodily injury is to immediately respond with overwhelming force and continue to apply that force until the threat is over.").

mortar attack in Iraq in 2003.[182] After a single mortar round was fired into his compound, Lieutenant Colonel Nathan Sassaman responded with twenty-eight artillery shells, forty-two mortar rounds, and two airstrikes—one with a 500 pound bomb and another with a 2,000 pound bomb, later stating "[w]e just didn't get hit after that."[183] His "we just didn't get hit after that" response is just one further example of the belief that overwhelming force was the answer to all problems.

While the use of overwhelming force in response to a hostile act or hostile intent may protect the lives of deployed forces in the short term, the attendant civilian deaths and injuries create second and third order effects that are likely to place both the national policy objectives and lives of the military forces in jeopardy in the long term. Instead of gaining the trust and support of the civilian population, the intervening force that uses overwhelming force runs the risk of alienating them, resulting in responses that may be limited to a decrease in cooperation, such as information sharing, to outright hostility, creating additional enemy forces that may later carry out attacks against the intervening military forces.[184]

Conversely, rules of engagement that are restrictive in nature, calling for restraint on the part of forces even when they are faced with a hostile act or hostile intent, not only run the risk of inadequately protecting the force, but also of eroding public domestic support.[185] The experiences in both Lebanon and Somalia highlight the potential for strategic risk when rules of engagement are, or are perceived to be, overly restrictive.[186] The scenes of dead American soldiers playing across the TV screens of people at home, coupled

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182. FILKINS, *supra* note 165, at 163.

183. *Id.*

184. *See* Luke N. Condra et al., *The Effect of Civilian Casualties in Afghanistan and Iraq* 33 (Nat'l Bureau of Econ. Research, Working Paper No. 16152, 2010) (finding "strong evidence of a revenge effect" in Afghanistan).

185. MATTHEW WAXMAN, INTERNATIONAL LAW AND THE POLITICS OF URBAN AIR OPERATIONS MR-1175-AF, 25–26 (2000); *see also* Rowan Scarborough, *Increase in Battlefield Deaths Linked to Rules of Engagement*, WASH. TIMES, Dec. 5, 2013, at A1 (discussing challenges to the rules of engagement by current and former Marine personnel).

186. *See* Barry M. Blechman & Tamara Cofman Wittes, *Defining Moment: The Threat and Use of Force in American Foreign Policy*, 114 POL. SCI. Q. 1, 5 (1999) (quoting Mohamed Farah Aideed, former leader of a Somali faction) ("We have studied Vietnam and Lebanon and know how to get rid of Americans, by killing them so that public opinion will put an end to things.").

with accusations that political and military leaders restricted troops' ability to protect themselves, would likely undermine domestic political support for an operation. Overly restrictive rules of engagement, coupled with a fear of investigation and prosecution for alleged U.S. uses of excessive force, may cause forces to hesitate in using force in response to a hostile act or hostile intent.

The approach taken in the case of Somalia and the UNITAF ROE, where technical vehicles and crew served weapons were declared "threats," was an attempt to satisfy the operational requirements of removing these weapons from the streets so they no longer presented a threat to the humanitarian relief efforts while limiting the use of force to cases of self-defense.[187] This, in essence, created a hybrid self-defense rules of engagement, wherein those weapons and personnel manning them were treated as potentially hostile without authorizing the use of force against them absent their noncompliance with attempts to confiscate their weapons.

This type of rules of engagement had not been used before and created some confusion over what was meant by "threat."[188] The clarification provided was that such weapons could not be immediately attacked but that individuals manning them could be challenged and "all necessary force" used to disarm them.[189] With this clarification, the rules of engagement were seen as adequate in allowing sufficient use of force for self-defense and effective in dealing with the threats posed by armed individuals and crew served weapons.[190] There was little violence against U.S. forces, most of the technical vehicles and crew served weapons disappeared from the streets of Mogadishu, and weapons confiscations met with little opposition.[191]

As the security situation in Somalia changed, so did the rules of engagement. Shortly after UNOSOM II took over the military mission from UNITAF, the security situation deteriorated and UNOSOM forces increasingly came under attack.[192] The UNOSOM commander responded to this changing security environment by authorizing the use of force, including air strikes in limited

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187. F. M. Lorenz, *Law and Anarchy in Somalia*, U.S. ARMY WAR C. Q.: PARAMETERS, Winter 1993–94, at 27, 28.

188. Lorenz, *supra* note 39, at 63–64.

189. *Id.* at 64.

190. *Id.* at 65.

191. *Id.* at 64–65.

192. *Id.* at 66–67

circumstances, against technical vehicles, crew served weapons, and armed militias without provocation.[193] Although the rules of engagement still referred to them as threats, these objects were essentially declared hostile, thereby expanding the rules of engagement beyond mere self-defense.[194] After the alleged shooting of a pregnant Somali woman by a U.S. sniper, this rules of engagement change was reinterpreted, limiting the targeting of these objects by U.S. snipers.[195] This change was quickly noticed by the armed militias, resulting in more technical vehicles and crew served weapons on the streets of Mogadishu and an increased threat to U.S. and UN forces.[196] This incident shows that not only must commanders remain cognizant of the need to revise the rules of engagement to reflect evolving threats but also that changes in the rules of engagement may, in turn, affect the security environment.

Recent U.S. experiences in Afghanistan in dealing with the strategic consequences of civilian deaths highlight the difficulty in striking the balance between preventing civilian casualties and protecting U.S. troops.[197] President Karzai's and the international community's criticism of civilian casualties caused by airstrikes on Afghan compounds led to General McChrystal issuing a tactical directive that limited the circumstances under which airstrikes against houses and compounds would be authorized.[198] Under standard self-defense rules of engagement, forces who were attacked from a compound could call in airstrikes in order to defend themselves from such an attack.[199]

Despite this change being widely criticized by many in the United States, including some members of the U.S. military, as being too restrictive and a move that would lead to increased U.S. casualties, civilian casualties did drop after its implementation.[200]

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193. *Id.* at 66.

194. *Id.* at 68.

195. *Id.* at 69–70.

196. *Id.* at 70.

197. *See* Condra et al., *supra* note 184, at 32.

198. Tactical Directive, International Security Assistance Force (July 6, 2009) http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf.

199. *See id.* ("This directive does not prevent commanders from protecting the lives of their men and women as a matter of self-defense . . . .").

200. Walter Dorn, *The Just War Index: Comparing Warfighting and Counterinsurgency in Afghanistan*, 10 J. MIL. ETHICS 242, 253–54 (2011).

This tactical directive was replaced by General Petraeus when he assumed command and again by General Allen in 2011.[201] These latter directives were not as restrictive as the initial tactical directive but still stressed the need to balance the use of force with the need to protect Afghan civilians. In his directive, General Allen stated "[c]onsider all use of force carefully . . . [e]nsure that the use of force is necessary and proportionate to the threat faced, and when applied it is precisely delivered."[202] He further stated that "my direction in no way compromises the inherent right of every individual and unit to employ appropriate measures in self-defense."[203]

D.   *Defense of others: who will be protected and when?*

Another matter that should be addressed by the rules of engagement is whether force may be used in defense of other forces and personnel. In traditional armed conflicts, the use of force may also be authorized in defense of partner nation forces.[204] The rules of engagement may also authorize the use of force to defend civilians who are threatened with death or serious injury and should be addressed in any intervention that has an objective of protecting the civilian population.[205] Allowing the use of force to protect civilians does carry risks. In an internal, civil conflict, where no group is seen as uninvolved or innocent, such use of force could also lead to a perceived loss of impartiality and further embroil intervening forces in the conflict.[206]

The U.S. experience in Lebanon in 1983 is just such an example. The use of force in support of the Lebanese Armed Forces against Druze and Shia militia groups led to a perceived loss of neutrality in the internal Lebanese conflict and likely created additional threats to U.S. forces.[207] The use of large caliber, indirect, naval fire also resulted in additional civilian casualties, creating further enemies among those groups who might otherwise not present a threat to U.S. forces.[208] Instead of acting as a buffer, separating the various factions

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201. COMISAF's Tactical Directive, International Security Assistance Force (Nov. 30, 2011) http://www.isaf.nato.int/images/docs/20111105%20nuc%20 tactical%20directive%20revision%204%20(releaseable%20version)%20r.pdf.

202. *Id.*

203. *Id.*

204. OPERATIONAL LAW HANDBOOK, *supra* note 13, at 77.

205. *Id.* at 76.

206. *Id.* at 66.

207. DOD COMMISSION REPORT, *supra* note 59, at 42.

208. *Id.* at 39–40.

to give the Lebanese Armed Forces the time to reassert control, this use of force brought the United States into the conflict itself, in direct contravention of the original mission.[209]

Using force to defend civilians in the Syrian conflict would be even more complex. Fluid membership and shifting allegiances in and among the groups would make it extremely difficult to identify who should be protected and from whom. Would force be authorized to defend opposition forces from Syrian regime forces and its surrogates? If so, would this also include ISIS and ANF forces? If the intervention included an objective to disrupt and destroy ISIS and ANF forces, would force be authorized to protect Syrian regime forces being attacked by these groups? Even if the rules of engagement were clear on their face on who may be protected and when, applying this in the field would be challenging, making mistakes very likely. Additionally, the involvement of Iran and other states raises the risk of a mistake in the use of force escalating the conflict requiring geographical limitations on the use of force. For example, scenarios such as whether force could be used to defend against attacks from ISIS controlled areas in western Iraq or from Hezbollah controlled areas in Lebanon would need to be addressed in the rules of engagement.

E.   Reviewing and changing rules of engagement to reflect the changing threat and security environment

Just as rules of engagement must be reviewed and changed when mission objectives change, commanders must also review and change rules of engagement as the operational environment and nature of the threat changes. This requires both an awareness of the operational area and adequate intelligence assets that are capable of detecting these changes. Commanders also have to develop a process that accepts input from those leading operations in the field, as they will often be the first to detect changing threats.[210]

Again, the U.S. experiences in Lebanon and Somalia show the importance of being aware of changing security conditions and revising the rules of engagement in response to those changes. While the rules of engagement for U.S. forces in Lebanon were changed to allow the use of naval gunfire and other indirect fire weapons to

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209. *Id.* at 44.

210. *See* OPERATIONAL LAW HANDBOOK, *supra* note 13, at 83 (defining and explaining Escalation of Force).

support the Lebanese Armed Forces, those changes were not adequate to address the increased threat to U.S. forces. Despite coming under increasing attack, including small arms fire on the barracks and the use of suicide vehicle bombs against other targets, Marine sentries were still prohibited from keeping their weapons fully armed to quickly respond to a hostile act.[211] Thus, even though the rules of engagement allowed, in theory, the use of force in response to a hostile act, those same rules of engagement placed practical limitations on the force's ability to do so.

While the intervention in the civil conflict in Somalia began as a humanitarian operation, the U.S. mission soon expanded to include the attempted disarming of the clans and the arrest of Aided and other senior clan leaders. As in the case of Lebanon, this expansion of the mission turned elements of the population against U.S. and UN forces leading to increased attacks against these forces. As this threat continued to increase, the rules of engagement were restricted, with snipers no longer allowed to target, without provocation, the technical vehicles and crew served weapons that presented the greatest threats. This only further emboldened the armed clans who quickly understood the changes in rules of engagement and used them to their advantage.

CONCLUSION

Conflicts where there is clarity on the battlefield, where combatants and civilians are easily distinguished, may be a thing of the past.[212] U.S. forces will continue to find themselves operating in highly fluid and complex environments with shifting mission objectives and unclear threats. How then can those forces adequately balance the use of force to both accomplish the mission and protect themselves?

Unfortunately, the answer is not as simple as merely drafting better rules of engagement. Ensuring that forces intervening in civil conflicts are organized, trained, and equipped appropriately is the first step in meeting the challenges posed by these operations. Those forces should be familiar with the environment into which they are deploying so that they may better understand what acts will constitute hostile intent.[213] Sufficient intelligence assets will be needed to help

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211. DOD COMMISSION REPORT, *supra* note 59, at 45.

212. DAVID KENNEDY, OF WAR AND LAW 112 (2006).

213. *See* Thom Shanker, *Reshaped Military Will Bridge the Gap Between Special and Conventional Forces*, N.Y. TIMES, May 3, 2012, at A22 (discussing region-oriented army training).

commanders and troops understand the complex environment in which they will be operating. Intelligence assets are also necessary to alert commanders to changes in the operational environment, particularly a change in threats against the force. Such an intelligence capability cannot be built overnight and would need to be in existence prior to the forces deploying to the area of intervention, as highlighted by the U.S. experience in Lebanon.[214] Most importantly national leadership must provide clear strategic and policy goals built on solid domestic political support to military commanders prior to intervening in a civil conflict.

Additionally, policymakers and commanders must ensure that:

> - Policy and military objectives are clearly defined and understood by all within the chain of command;

> - There is a clear understanding of the operational environment, including the identification of threats to the force and mission;

> - Changes to the operational environment, including the emergence of new threats, are recognized; and,

> - The rules of engagement are reviewed and changed as the threat and operational environment changes.

While U.S. forces may never be ordered to intervene in the civil conflict in Syria, they will, at some point in the future, find themselves in a similar operational environment. When that time comes, let us hope that those ordering the intervention will give those forces clear mission objectives and the resources that will allow them to sufficiently balance the use of force to protect both the civilians at risk as well as those intervening in the conflict.

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214. *See* DOD COMMISSION REPORT, *supra* note 59, at 63–66 (discussing intelligence support in Lebanon).