**Hostile Intent: Background and Sources**

*Introduction:*

Rules of engagement, or ROE, are rules that set out when, where, and how force can be used. They are meant to codify and operationalize international and domestic legal obligations for military forces, including the principle of distinction between combatants and non-combatants.

U.S. Standing ROE (SROE), issued by the Joint Chiefs of Staff, permit U.S. forces to use lethal force in self-defense against individuals who commit hostile acts (for example, firing at troops) or demonstrate hostile intent (something less than a direct use of force). However, in Afghanistan, U.S. and ISAF troops appear to interpret hostile intent broadly, leading to the killing of civilians not directly participating in hostilities or otherwise demonstrating any hostile intent and therefore protected from attack under international law. In many cases, non-threatening behavior by non-combatants – picking up a cell phone, running away from the scene of an attack, or going to help a family member who has already been shot – is frequently interpreted as “hostile intent” by U.S. forces justifying the targeting and use of lethal force against such civilians.

The interpretations of hostile intent in U.S. and ISAF members’ laws, policies, and practices have a significant impact on civilian protection and IHL compliance. Military forces’ determination that civilians have demonstrated hostile intent is a major cause of civilian casualties during night raids and frequently behind civilian deaths in escalation of force incidents. The interpretation of hostile intent in situations where combatants should be considered hors de combat is also a major concern and an area of ambiguity under international law as well as state policy and practice.

Understanding existing and past U.S. and foreign countries’ ROE will be a natural starting point for research and advocacy on hostile intent. Further research should also be guided by the existing tensions and debates among governments, NGOs, academics, and international organizations on the interpretation of hostile intent in both law and practice.

*US Policy:*

US Army Operational Law Handbook, 2011 (see esp Ch 5 on ROEs, including reprinted declassified 4 8 page of commentary and look at examples of ROE’s portions of US SROE): <http://www.loc.gov/rr/frd/Military_Law/pdf/operational-law-handbook_2011.pdf>

Joint Chiefs of Staff Standing ROE (2000): <http://www.dtic.mil/doctrine/jel/cjcsd/cjcsi/3121_02.pdf>

US DOD Manual for Court Martials: <http://www.apd.army.mil/pdffiles/mcm.pdf>

ROE Card for U.S. Military Forces in Iraq, Appendix E, Off Target, HRW: <http://www.hrw.org/sites/default/files/reports/usa1203.pdf>

ROE for U.S. Military Forces in Operation Restore Hope, Somalia 1992-1993, <http://www.globalsecurity.org/military/library/policy/army/fm/100-23/fm100_10.htm>

ROE for U.S. Military Forces in Haiti, 1994: <http://www.cgsc.edu/carl/resources/csi/kretchik/appendixg.asp>

The Forever War, Dexter Filkins, pp. 186-88 (JA ROE instructions to Marines prior to Fallujah), <http://books.google.com/books?id=0rAXFBk8MCoC&pg=PA186&lpg=PA186&dq=dexter+filkins+rules+of+engagement&source=bl&ots=1t4Nk5-OHn&sig=746dpkO7FmqJrA34kU75tkmdf2I&hl=en&ei=cZ9zTtStBMnxsgb9quS0Cw&sa=X&oi=book_result&ct=result&resnum=5&ved=0CD4Q6AEwBA#v=onepage&q&f=false>

*International Law:*

ICRC Interpretive Guidance on the Notion of Direct Participation in Hostilities: 1 page 41-69 “hostile intent” <http://www.icrc.org/eng/resources/documents/publication/p0990.htm>

Institute of International Humanitarian Law Rules of Engagement Handbook: 3 10 page intro-short appendix on Hostile intent <http://www.usnwc.edu/getattachment/7b0d0f70-bb07-48f2-af0a-7474e92d0bb0/San-Remo-ROE-Handbook>

ICRC Customary Law Database: <http://www.icrc.org/customary-ihl/eng/docs/home>

UN Basic Principles on Use of Force and Firearms by Law Enforcement Officials: <http://www2.ohchr.org/english/law/firearms.htm>

*Academic Articles and Books*

UNTYING THE GORDIAN KNOT: A PROPOSAL FOR DETERMINING APPLICABILITY OF THE LAWS OF WAR TO THE WAR ON TERROR, Geoffrey S. Corn and Eric Talbot Jensen, 81 Temp. L. Rev. 787

DEFINING THE RIGHT OF SELF-DEFENSE:

WORKING TOWARD THE USE OF A DEADLY FORCE APPENDIX TO THE STANDING RULES OF ENGAGEMENT FOR THE DEPARTMENT OF DEFENSE, Major David Bolgiano, 31 U. Balt. L. Rev. 157

RULES OF ENGAGEMENT AND FRATRICIDE PREVENTION: LESSONS FROM THE

TARNAK FARMS INCIDENT, C. Peter Dungan, 9 UCLA J. Int'l L. & For. Aff. 301

DECONSTRUCTING NOTION OF DPH: CONSTITUITIVE ELEMENTS, Schmitt: 2 talks about ICRC <http://www.law.nyu.edu/ecm_dlv4/groups/public/@nyu_law_website__journals__journal_of_international_law_and_politics/documents/documents/ecm_pro_065931.pdf>

Targeting in Operational Law. In The Handbook of the Law of Military Operations. Gill, Terry & Fleck, Dieter Oxford UP.

Targeting in Afghanistan, Schmitt, in International Law and the War in Afghanistan. Vol 85. Naval War College International Law Studies: <http://www.usnwc.edu/Research---Gaming/International-Law/Studies-Series/documents/Vol-85-Web1.aspx>