



Soldiers of 1st Battalion, 21st Infantry Regiment, and soldiers of the German army conduct tactical operation center activities during their Joint Pacific Multinational Readiness Center rotation on 27 July 2023 at Townsville Field Training Area, Townsville, Australia. Commanders must instill in their subordinates the confidence to assume prudent risk in the application of lethal force under permissive rules of engagement during large-scale combat operations. (Photo by Spc. Mariah Aguilar, U.S. Army)

# Lethal Force, Risk, and LSCO

## Preparing for Permissive Rules of Engagement in Large-Scale Combat Operations

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## Battlefield Next

Maj. Casey, the chief of the Joint Air Ground Integration Center (JAGIC), grabs a seat at his workstation and starts his day. Less than five minutes into his shift, the fire support NCO calls out, “Fire mission ... GMTI [ground movement target indicators] suggest enemy vehicles heading into what appear to be a group of apartment buildings.” Casey pulls up the grid coordinates for the apartment buildings on his Command Post Computing Environment (CPCE) map. As he is looking at this location on the CPCE map, the field artillery intelligence officer (FAIO) comes by to discuss this target. “Sir, we assess that this GMTI indicates enemy movement because the majority of the civilian population has long since evacuated this area. Also, the GMTI pattern is indicative of a military convoy.” Casey presses the FAIO on what type of enemy vehicles he assesses this to be, to which the FAIO replies, “Sir, armor and ADA [air defense artillery] that the G-2 assesses defends critical assets in the area. Other intelligence indicates that industrial buildings in the vicinity are being utilized to repair and refit rocket artillery. Finally, there is a planned offensive operation with an air assault to seize that portion of the city within the next forty-eight to seventy-two hours.” Casey looks over at the high-payoff target list (HPTL) that is taped to the analog map in the center of the JAGIC table and sees that ADA is number one on the HPTL.

Maj. Casey’s initial instinct is that this is a valid military target, and he knows he has the delegated authority under the rules of engagement (ROE) to authorize the strike, but he would like to get his judge advocate’s (JA) advice on this.<sup>1</sup> However, the JAGIC is operating as a dispersed command node, and the JA is back at the current operations integration cell. Undeterred, he mentally walks through the five law of armed conflict (LOAC) principles—military necessity, distinction, proportionality, humanity, and honor—and confirms to himself that this is a lawful target.<sup>2</sup> For proportionality, that mental analysis requires slightly more thought. Even with weaponeering solutions designed to minimize civilian casualties, any aerial delivered munitions are likely to cause a significant but unknown amount of damage to what he believes may be apartment buildings, and further, may cause civilian casualties if not all of the civilians evacuated the area or if some civilians returned to the area. Thinking through the military advantage to be gained by destroying enemy weapons systems that are at the top of the HPTL, Casey confirms to himself that potential civilian casualties would not be excessive in relation to that military

advantage. Yet, Casey still struggles to approve a strike on this target. While he knows that he is on solid LOAC ground to strike this target, Casey is concerned about the information operations (IO) risk. His mind goes back to his time in Afghanistan in 2019, when the United States came under scrutiny for civilian casualties resulting from attacks on drug labs that the Taliban used to fund operations.<sup>3</sup> He is worried that this strike might come under the same scrutiny. His mind then races further back to his time as a battery commander. He remembers the frustration he felt when he was prohibited from delivering an aerial strike on an improvised explosive device cell operating in broad daylight because there were too many civilians in the area.

Unsure if the commanding general (CG) is willing to accept that level of collateral damage or assume the IO risk of striking this target, or if he has the authority to pass on the target, Casey starts to reach for the phone to get the division’s main command post on the line. Then he remembers that communications with that command post have been down for the last four hours. As Casey realizes that this decision is now his—and his alone—to make, the senior air director informs him that they will only have air assets on station for another five minutes.

## Preparing for Permissive Rules of Engagement in Large-Scale Combat Operations

Any future large-scale combat operations (LSCO) battlefield is going to be unpredictable and unlike anything experienced in recent history.<sup>4</sup> According to U.S. Army Training and Doctrine Command (TRADOC), “The Army can expect that LSCO will be characterized by multidomain threats on an increasingly transparent and lethal battlefield across multiple theaters. Our adversaries will capitalize on the democratization of technology and advances in robotic and cyber systems to confront the U.S. Army in every domain.”<sup>5</sup> Considering the scale, scope, and violence of LSCO—as envisioned by TRADOC—the ROE will need to be permissive to effectively execute mission command with the appropriate level of control.<sup>6</sup>

The purpose of this article is to provide commanders—and the subordinates like Maj. Casey who execute their intent—with the confidence to assume prudent risk in the application of lethal force under permissive ROE. This article will aid in the development of that confidence by framing the challenge ahead and offering





commanders ways to ensure their subordinates understand their risk tolerance for the application of lethal force. As our Army learns lessons from the war in Ukraine and looks ahead to a future LSCO fight, our command posts need to be “less of a place or a thing and [function] more as a service.”<sup>7</sup> The commander’s ability to disperse a command post on short notice is going to be critical in the future LSCO fight.<sup>8</sup> Even the most casual observer of the Russia-Ukraine War understands that a command post must move to survive.<sup>9</sup> Going forward, our Army must flood “the area of operations with a constellation of command-and-control nodes dispersed over wide areas.”<sup>10</sup> Dispersed command nodes must have redundant capability in an environment where communications are degraded. To maximize that redundancy, the commander must delegate the authority to act. To that end, our leaders at these reduced-footprint command posts need to have the confidence without the benefit of a JA’s advice to assume prudent risk as defined by the commander.

To prepare themselves and their teams for LSCO under permissive ROE, commanders should heed the chief of staff of the Army’s call to strengthen the

Sgt. Andreas Bellos, 2nd Battalion, 8th Infantry Regiment, 2nd Armored Brigade Combat Team, 4th Infantry Division, shoves a protester away as a mob swarms the entry point to Forward Operating Base Gerber, Kuwait, during an exercise on 26 March 2014. Bellos used the shout, show, shove, and shoot technique to engage the belligerent mob. Today’s Army senior leaders, raised during the Global War on Terrorism, see rules of engagement through the lens of constraint. (Photo by Sgt. Marcus Fichtl, U.S. Army)

profession by sharing ideas, engaging in debate, and learning together.<sup>11</sup> Commanders must be confident in their ability to conduct a LOAC analysis without a JA and have confidence that their subordinates can do the same. This confidence can only be achieved by engaging in debates about the LOAC and sharing ideas *up*, *down*, and *across echelon*. Doing so will aid subordinates’ understanding of how the commander assesses risk in using lethal force on a complex battlefield, what unforeseen or potentially negative IO incidents the commander is willing to underwrite, and who among subordinate leaders has the delegated authority to make certain decisions. From our experiences in the last two decades of counterinsurgency operations, our Army’s culture is to view ROE through the lens of constraint.

To change that culture to one that views ROE as an enabler to mission accomplishment, we need to share ideas and engage in debate, and we need to do so now. By the time we are in the fight, it will be too late.

**The ROE cannot be the only tool for empowering subordinates to assume prudent risk in the application of lethal force, especially for an Army suffering a counterinsurgency (COIN) hangover.** Today's generation of Army senior leaders see ROE through the lens of constraint. They grew up with, were trained on, and will therefore default to ROE that explicitly—and in great detail—told them when a commander had to be involved in a decision to use lethal force that had any potential collateral effects on civilians or civilian structures. As a result, we have an entire generation of leaders who have become reliant on the ROE to tell them not only when and how to use lethal force but also the level of command required to approve the use of such lethal force. Just consider the career of a typical infantry brigade commander who takes command in 2024. This commander was likely a platoon leader and company commander in Iraq and/or Afghanistan during the early to middle part of the Global War on Terrorism (GWOT). There is also a good chance they spent time as a battalion executive officer, operations officer, or commander during the last five years that the U.S. Army had a presence in Afghanistan. During these crucible leadership experiences, these leaders had to wait for hostile intent or a hostile act to confirm that someone in civilian clothes was the enemy, or the authority to use force was withheld to a commander echelons above them. While these kinds of ROE restrictions served their purpose during COIN missions, during LSCO, these types of restrictions will have limited application and potentially disastrous consequences. In LSCO against a declared hostile force, commanders will have wide discretion to apply lethal force against numerous military targets in a time-constrained environment. The ROE in and of itself will not provide enough guidance on how to utilize that wide discretion because the lethality and speed of the peer LSCO fight will require an ROE that is permissive to successfully accomplish the mission. In the spring of 2021, the judge advocate general of the Army, Lt. Gen. Charles Pede, assessed a critical warfighting capability gap, which was a tendency by commanders and JAs to inadvertently view warfighting through the lens of

their prior GWOT experience.<sup>12</sup> In other words, when operating in a LSCO environment (albeit a training one), our forces experienced the “hangover” of their own Iraq and Afghanistan deployments.<sup>13</sup> The cure for this hangover, according to Pede, is simply “knowing the fundamentals of the law of war and the inevitable policy overlay.”<sup>14</sup>

Summarizing the policy overlay that prevailed through the GWOT era, Pede described the ROE as involving “notions of restrained employment of force in order to win the peace amid the reestablishment of institutions of governance.”<sup>15</sup> Looking ahead to LSCO against a peer adversary, the ROE will likely prioritize the survival of combat power. Commanders who will lead their formations in these permissive ROE environments will have to know the fundamentals. But that is only half of what a commander must do. In LSCO, commanders must train and empower their subordinates to exercise discretion at each echelon of command. With that discretion must come guidance from commanders in terms of evaluating risk in the application of lethal force at echelon.

**We must incorporate the Civilian Harm Mitigation and Response Action Plan into our preparations for LSCO.** On 27 January 2022, Secretary of Defense Lloyd Austin issued a memorandum directing the development of the Civilian Harm Mitigation and Response Action Plan (CHMR-AP).<sup>16</sup> In December 2023, DOD published DOD Instruction (DODI) 3000.17, *Civilian Harm Mitigation and Response*, to implement the CHMR-AP.<sup>17</sup> A review of this DODI suggests that although the policies that drove GWOT ROE may have changed, DOD recognizes that policy considerations will never be absent from the battlefield. Further, the policy reaffirms both U.S. and professional military values of protecting innocent civilians caught up in the horrors of war. The LOAC has long required commanders to take feasible precautions to protect civilians during conflict.<sup>18</sup> The DOD has now implemented additional protective measures as a matter of policy to further protect civilians and their property from harm.<sup>19</sup> Examples of such additional protective measures include “issuing standards for the identification of targets above what the law of war requires” and “selecting for employment weapon systems or munitions that may help mitigate civilian harm.”<sup>20</sup>





The CHMR-AP and its DODI not only acknowledge the commander's role and responsibility in regulating the use of lethal force but also reaffirm the commander's broad discretion in applying that lethal force to accomplish the mission. For example, the CHMR-AP directs the "prioritizing the protection and restoration of the civilian environment as much as *the situation allows* [emphasis added]."<sup>21</sup> The DODI provides that DOD components are to ensure that "appropriate adjustments are made to ongoing operations in response to relevant information relating to civilians and civilian objects *to the extent practicable* [emphasis added]."<sup>22</sup> Language like "as the situation allows" and "to the extent practicable" merely reinforces the broad discretion commanders already have under the LOAC. The *Department of Defense Law of War Manual*, DOD's implementation of LOAC, is laden with the word "practicable"—appearing sixty-seven times throughout the document. Thus, even though the CHMR-AP directs additional safeguards to what LOAC requires, those additional safeguards must still be practicable given the commander's military mission.

Taking all the above into account, commanders should not fear that the CHMR-AP has stripped them of their discretion. Quite the opposite. The language

A member of U.S. Africa Command's (AFRICOM) civilian harm mitigation and response (CHMR) team briefs members of the Civilian Protection Center of Excellence and the European Command's CHMR team during the inaugural CHMR Foundational Training at AFRICOM. AFRICOM hosted the event on 8 September 2024 in Stuttgart, Germany. The CHMR team is leading AFRICOM's implementation of the secretary of defense's CHMR Action Plan to enhance the Department of Defense's processes to apply civilian harm mitigation principles across the spectrum of military operations and to develop policies and procedures to respond appropriately when harm occurs. (Photo by Maj. Jonathan David Thompson, U.S. Africa Command)

in the CHMR-AP underscores the importance of the commander's responsibility in commanding and controlling the use of lethal force that includes training their subordinates and issuing clear guidance.

**LSCO ROE alone will not adequately convey a commander's risk tolerance.** The required permissive LSCO ROE—standing alone—will not adequately provide subordinate commanders (and staff officers like the JAGIC chief) with the tools to apply lethal force in accordance with the commander's intent.<sup>23</sup> A likely obvious example of ROE providing authority, but minimal guidance will be in describing the use of dual-purpose improved conventional munition (DPICM)—a critical capability to win in LSCO.<sup>24</sup> In a LSCO fight,

the ROE will likely just indicate the approval authority for utilizing DPICM, but it will not lay out the circumstances when DPICM is most appropriate to accomplish the overall mission. Thus, it is incumbent upon the commander to provide guidance and intent regarding how they assess the risk of lawfully using DPICM in or near civilian structures, or the danger of unexploded ordinance to civilians that will remain long after the war is over.

Rules of engagement alone also do not adequately convey guidance to subordinate commanders concerning thresholds of intelligence required to make targeting decisions. A large component of our COIN hangover is our two decades' worth of experience owning the skies, which gave us near perfect situational awareness of activities on the ground. As we look ahead to LSCO, our commanders will be required to apply lethal force without the unprecedented level of knowledge they had during COIN. Example ROE language that addresses the threshold of information might look like this: "There must be a reasonable, good faith basis that the object of attack is a valid military target based on information available at the time. Examples of information that can inform a reasonable, good faith basis include visual observation, radar acquisition, or signal intelligence."

The *DOD Law of War Manual* offers some guidance on what it means to have a reasonable, good faith basis, providing that "attacks ... may not be directed against persons or objects based on *mere speculation* [emphasis added] regarding their possible current status as a military objective."<sup>25</sup> The *DOD Law of War Manual* also explains, "Individuals may consider persons or objects to be military objectives and make them the object of attack even if they have some doubt."<sup>26</sup> But, when does doubt turn into speculation? The *DOD Law of War Manual* provides no clear line of demarcation between these two concepts, nor should it due to the ever-changing conditions on the ground in combat. The level of lawful doubt the commander is willing to assume about either the target or what is around the target is simply an assessment of risk.

Perhaps the most significant shortcoming of ROE is its lack of guidance regarding the application of the principle of proportionality. The principle of proportionality involves judgments of "difficult and subjective comparisons."<sup>27</sup> The LOAC recognizes the subjective aspects of applying the principle of proportionality and

provides the commander with wide discretion.<sup>28</sup> The commander exercises professional military judgment in weighing the concrete and direct military advantage gained from a strike to the expected incidental death or injury to civilians and damage to civilian structures.<sup>29</sup> According to the *Commander's Handbook on the Law of Land Warfare*, "an extraordinary military advantage would be necessary to justify an operation posing risks of collateral death or injury to thousands of civilians."<sup>30</sup> However, extensive collateral damage does not equate to excessive.<sup>31</sup> A lawful strike may cause extensive collateral damage.<sup>32</sup> So, what does this guidance offer a JAGIC chief like Maj. Casey, who is evaluating a target where the civilian casualties will almost certainly not be in the thousands, but could be in the tens or a hundred?

In LSCO, there will not be explicit ROE that requires a level of approval if we are likely to injure X number of people. Due to the speed and lethality of the peer LSCO fight, we may only know the size of the building and nothing more. Time-sensitive decisions will have to be made on mission critical targets with limited information. Does Maj. Casey understand how the commander applies the principle of proportionality? Does Casey have the independent authority to pass on important targets because he is uncomfortable with level of lawful collateral damage? Regardless of the decision made, there will be potential trade-offs that result in risk. How does a commander balance or mitigate that risk, and how do subordinates exercise disciplined initiative in prosecuting those targets? Absent a commander taking a deliberate approach pre-conflict in training those subordinates, there is no way for those subordinates to know, and they will substitute their judgment—through action or inaction—for the commanders in making these difficult decisions.

**Commanders owe it to their subordinates to articulate their risk tolerance in the application of lethal force and to train their subordinates to competently execute within that risk tolerance. Tactical directives and vignettes are great ways to do so.** To be successful in LSCO, commanders will have to accept a level of control under the mission command philosophy that fully embraces subordinate decision-making and decentralized execution.<sup>33</sup> "Mission command requires commanders to issue mission orders," and "mission orders are directives that emphasize to subordinates the results to be attained,





not how they are to achieve them.”<sup>34</sup> A key part of a mission order is the commander’s intent, which is a “clear and concise expression of the purpose of operation.”<sup>35</sup> For mission command to be effective, subordinates must exercise disciplined initiative within the constraints of the commander’s intent as part of decentralized execution.<sup>36</sup>

To facilitate subordinates’ ability to operate in a degraded communications environment, commanders should consider using tactical directives, vignettes, or both. These are tools that can help subordinates understand how a commander balances risk to mission and risk to force, mitigates civilian casualties, and considers policy implications in the application of lethal force. These tools can help the staff and subordinate commanders understand the line where the commander starts to get uncomfortable and where the commander wants to be part of the conversation. Is the commander comfortable with Maj. Casey damaging or potentially destroying residential apartment buildings to prosecute a target that is high on the HPTL? Is the commander comfortable with Casey passing on the target, putting at risk critical friendly assets?

Rescuers work to clear rubble and search for survivors following a Russian attack in the Dnipropetrovsk region of Ukraine on 15 January 2023. In contrast to U.S. civilian harm mitigation and response policy, Russia has deliberately targeted Ukraine’s civilian population and facilities. (Photo by Pavlo Petrov, courtesy of [war.ukraine.ua](https://war.ukraine.ua))

These are hard decisions, and because the LOAC offers wide latitude on the application of lethal force, commanders must educate their subordinates on how they see risk. As stated in the *Commander’s Handbook on the Law of Land Warfare*, “The weighing or comparison between the expected incidental harm and the anticipated military advantage does not necessarily lend itself to empirical analysis.”<sup>37</sup> While this is instructive, it leaves a wide range of options to JAGIC chiefs and subordinate commanders.

**Tactical directives.** Commanders can amplify their intent through a tactical directive to ensure disciplined initiative in using lethal force. A tactical directive during LSCO needs to be a commander’s tool to inform subordinates on how the commander envisions using lethal force in an appropriate and disciplined way. A tactical directive should be illustrative guidance that

helps the subordinate commander understand his or her superior's intent. It is not prescriptive, nor is it punitive. Conflict is far too unpredictable, and the battlefield's unknown variables are too replete to make a tactical directive yet another constraint. Instead, a tactical directive during LSCO needs to help synchronize echelons so each is effectively and congruently using the amount of force required to accomplish the commander's intent.

During the Afghanistan Campaign, the International Security Assistance Force–Afghanistan (ISAF) commander issued a series of tactical directives that were mostly an effort to restrict the use of lethal force.<sup>38</sup> These COIN restrictions could be counterproductive during LSCO; however, if one reads the unclassified version of Gen. David Petraeus's 2010 tactical directive, the document does affirmatively focus on setting an overall tone within his command on how he assesses using lethal force to accomplish the mission.<sup>39</sup> The proscriptive elements of the 2010 tactical directive aside, the overall document provides clarity in the form of general guidance of how the commander sees using lethal force to accomplish the mission, and inherent in that guidance is both a consideration of the larger strategic environment and his assessment of risk.<sup>40</sup>

A more recent example is U.S. Central Command's Tactical Directive #1 that was issued in 2016, when the 1st Infantry Division served as Combined Joint Force Land Component Command–Operation Inherent Resolve.<sup>41</sup> This tactical directive gave Iraqi Security Forces ground force commanders “the ability to deliver joint coalition fires without having a one star [U.S. general] approve the strike, as was the policy previously.”<sup>42</sup> According to the 1st Infantry Division commanding general, Maj. Gen. Joseph M. Martin, “This environment allowed the philosophy of mission command to flourish; leaders had room to take initiative. The resultant responsiveness was tremendous and enabled a higher [Iraqi Security Forces] tempo in the fight.”<sup>43</sup> The most noteworthy aspect of Tactical Directive #1 is the removal of one-star general approval. Again, as an Army that is overcoming its own COIN hangover, we must remember how we got here—proscriptive rules and elevated approval authorities for using force as a way to mitigate operational and strategic risk in a COIN fight.

Unlike GWOT, where U.S. forces were almost always in a position of tactical overmatch, the peer LSCO fight will not allow the use of such proscriptive rules. In LSCO we will still be obligated to mitigate risk to civilians caught up in the fighting, as defined in LOAC and underscored by the CHMR-AP; however, commanders will need to push these critical decisions down to much lower levels. In Martin's words, “You have to delegate authority in order to get things done. You must trust your subordinates!”<sup>44</sup>

Of course, a tactical directive will only be as effective as the staff and subordinate commanders' understanding of it. Commanders can—in fact, they must—develop vignettes that they can work through with their subordinates to help them understand how the commander sees risk.

**Vignettes.** The Joint Readiness Training Center published *Ethical Bedrock Vignettes, Law of Armed Conflict in Large Scale Combat Operations*, which offers twenty vignettes developed from combat training center rotations.<sup>45</sup> Commanders can use these and other vignettes to have a dialogue with their subordinate commanders and staff. Such dialogue should lead to not just an understanding of the LOAC principles but also to the ability to confidently apply those principles within the commander's intent. If done right, the vignettes should also give subordinates a better understanding of the commander's tactical directive.

In addition to Joint Readiness Training Center products, commanders can look to history to develop their own vignettes. For example, Operation Desert Storm offers a vignette that facilitates good discussion on LSCO, risk tolerance, and the application of lethal force. In the early stages of Desert Storm, the air campaign was largely successful in avoiding civilian casualties.<sup>46</sup> However, on 13 February 1991, American stealth aircraft bombed the Al Firdos bunker.<sup>47</sup> Leading up to this strike, U.S. intelligence indicated that the bunker was active as a command and control facility—the bunker had a camouflaged roof, barbed wire perimeter, armed guards controlling access, and upgraded communication equipment.<sup>48</sup>

Unfortunately, unbeknownst to Coalition forces, “Iraqi civilians ... sheltered in the top floor of the bunker at night.”<sup>49</sup> Initially, reporters estimated that over five hundred people were killed.<sup>50</sup> With Western journalists allowed unfettered access to the carnage and charred



remains, the Iraqis found “a propaganda opportunity to turn world opinion to their favor and this incident fit their desired narrative.”<sup>51</sup> However, Brig. Gen. Richard Neal, deputy commanding general for operations at U.S. Central Command, conducted a press briefing in response to this incident, during which he emphasized the military nature of this target.<sup>52</sup> Neal told the press, “From a military point of view, nothing went wrong. From a personal point of view, I’m outraged that civilians might have been placed in harm’s way, and I blame the Iraqi government and Iraqi leadership for that.”<sup>53</sup> Yet, despite our defense of the decision to strike the bunker, these “civilian casualties harmed U.S. efforts publicly and significantly hampered strikes on targets near the center of Baghdad for the rest of the war.”<sup>54</sup>

Al Firdos offers commanders an opportunity to force conversations that will make their subordinates uncomfortable—in a good way. Taking a tiered approach, the first (and easier) direction to take the conversation can be on the threshold of intelligence to justify targeting decisions. Is a camouflaged roof, barbed wire, or armed guards sufficient in the commander’s mind to make something a military target? With Al Firdos, the coalition pointed to several items to support the argument that it was a military target. However, in battlefield next, would just one of these indicators be enough to identify this as a military target?

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And if the commander thinks that just one indicator is enough, how does he reconcile that with the CHMR-AP? Even more challenging than the intelligence threshold question is what would the commander do with ample intelligence that the bunker was a military target *and* reliable intelligence that it also housed civilians? What feasible precautions is the commander willing to take to mitigate risk to civilians?<sup>55</sup> Is a commander willing to risk her own forces to mitigate civilian risk? How many civilian casualties is the commander willing to accept compared to the military advantage gained?

At its core, these hard LOAC questions involve elements of ethics and morality.<sup>56</sup> Commanders must start with a personal understanding of LOAC and ensure the same for their subordinates. Empowered with that, vignettes are great tools for commanders to work through these hard questions with their staff and subordinate commanders because there will be no clear-cut

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answers. The *DOD Law of War Manual* recognizes that “different professionals are likely to come to different conclusions about whether an anticipated collateral damage is excessive in the same situation, when applying the law in good faith.”<sup>57</sup> Thus, vignettes allow commanders to show their subordinates how to engage in moral and ethical reasoning. Participation in and observation of these discussions will likely prove insightful to commanders who are going to have to decide how much discretion they plan to give their subordinates.<sup>58</sup>

## Battlefield Next ... Take Two

As Maj. Casey thinks through his decision to authorize a strike in a residential area based on GMTI and the

intelligence assessment, he thinks back to the train-up that led to this deployment. He quickly mentally goes through the vignettes that he discussed with the CG and the rest of the staff and reflects on the commander's tactical directive. He knows that this decision is not just a legal one, but it involves ethics, morals, and professional military judgment. He thinks about the likely loss of civilian life, and the near real-time scrutiny of the strike by enemy social media. Nevertheless, in his professional military judgment, striking this target will have a significant impact on the enemy's ability to impede his unit's mission. Armed with that knowledge, Casey authorizes the strike with the confidence that he is operating within his commander's intent and guidance. ■

## Notes

1. Rules of engagement (ROE) are defined 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.” Joint Publication 3-84, *Legal Support* (U.S. Government Publishing Office [GPO], 2 August 2016), GL-3.

2. Office of General Counsel, *Department of Defense Law of War Manual* (Department of Defense [DOD], July 2023), chap. II, <https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF>.

3. “US Meth Lab Strikes in Afghanistan Killed at Least 30 Civilians, Says UN,” BBC News, 9 October 2019, <https://www.bbc.com/news/world-asia-49984804>.

4. Large-scale combat operations are defined as “extensive joint combat operations in terms of scope and size of forces committed, conducted as a campaign aimed at achieving operational and strategic objectives.” *Army Doctrine Publication* (ADP) 3-0, *Operations* (U.S. GPO, 31 July 2019), Glossary-6.

5. Training and Doctrine Command (TRADOC) Pamphlet 525-92, *The Operational Environment and the Changing Character of Warfare* (TRADOC, 7 October 2019), 30, <https://adminpubs.tradoc.army.mil/pamphlets/TP525-92.pdf>.

6. “Determining the appropriate level of control, including delegating decisions and determining how much decentralized execution to employ, is part of the art of command.” ADP 6-0, *Mission Command: Command and Control of Army Forces* (U.S. GPO, 31 July 2019), 1-5; see also figure 1-1, “Levels of Control.”

7. “If we envision our command posts as less of a place or a thing and more as a service, it may be possible to vastly increase our agility.” Milford Beagle Jr., Jason C. Slider, and Matthew Arrol, “The Graveyard of Command Posts,” *Military Review* 103, no. 3 (May-June 2023): 17, <https://www.armyupress.army.mil/Portals/7/military-review/Archives/English/MJ-23/Gen-Beagle/beagle-slider-arrol-command-posts-UA.pdf>.

8. Ibid., 17 (discussion on agility).

9. Ibid.

10. Ibid., 21.

11. “Additionally, we all must own our profession - share ideas, engage in debate, and learn together.” Michael R. Weimer, Randy A. George, and Christine E. Wormuth, “Message to the Army Team,” *Army.mil*, 26 October 2023, <https://www.army.mil/article/271225>.

12. Charles Pede and Peter Hayden, “The Eighteenth Gap: Preserving the Commander's Legal Maneuver Space on ‘Battlefield Next,’” *Military Review* 101, no. 2 (March-April 2021): 6, <https://www.armyupress.army.mil/Portals/7/military-review/Archives/English/MA-21/Pede-The-18th-Gap-3.pdf>.

13. Ibid.

14. Ibid., 19.

15. Ibid., 8.

16. DOD, *Civilian Harm Mitigation and Response Action Plan* (CHMR-AP) (Washington, DC: DOD, 25 August 2022), <https://media.defense.gov/2022/Aug/25/2003064740/-1/-1/1/CIVIL-IAN-HARM-MITIGATION-AND-RESPONSE-ACTION-PLAN.PDF>.

17. DOD Instruction (DODI) 3000.17, *Civilian Harm Mitigation and Response* (DOD, 21 December 2023), <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/300017p.PDF?ver=EaU00OCh3Y07Kiu5BYOTYw%3d%3d>.

18. The law of armed conflict requires combatants (e.g., commanders) to “take feasible precautions in planning and conducting attacks to reduce the risk of harm to civilians.” Office of General Counsel, *DOD Law of War Manual*, 259.

19. DOD Instruction 3000.17, *Civilian Harm Mitigation and Response*.

20. Ibid.

21. DOD, CHMR-AP, 1.

22. DODI 3000.17, *Civilian Harm Mitigation and Response*, 26.

23. National Security Law Department, *Operational Law Handbook* (The Judge Advocate General's Legal Center and School, 2024), 105, [https://tjaglcs.army.mil/Portals/0/Publications/Deskbooks%20and%20Handbooks/2024%20Operational%20Law%20Handbook%20\(2024\).pdf?ver=VgRjo4\\_3XCiOQJThdhE-ZUQ%3d%3d](https://tjaglcs.army.mil/Portals/0/Publications/Deskbooks%20and%20Handbooks/2024%20Operational%20Law%20Handbook%20(2024).pdf?ver=VgRjo4_3XCiOQJThdhE-ZUQ%3d%3d). The drafting of the rules of engagement will always include international law, political objectives and military mission limitations, for example, CHMR-AP.



24. "The standard U.S. submunition is called dual-purpose improved conventional munition, or DPICM. It is dual-purpose because it has effects on both vehicles and personnel. The most recent version, the M77, has a penetrating charge for attacking vehicles and a fragmentation element for attacking personnel. ... [A] dispenser releases the submunitions above the target, and the submunitions spread out as they fall. The submunitions explode when they hit the ground affecting a much larger area than a single, concentrated explosion." Mark F. Cancian, "Cluster Munitions: What Are They, and Why Is the United States Sending Them to Ukraine?," Center for Strategic and International Studies, 10 July 2023, <https://www.csis.org/analysis/cluster-munitions-what-are-they-and-why-united-states-sending-them-ukraine>.
25. Office of General Counsel, *DOD Law of War Manual*, 202.
26. *Ibid.*, 204.
27. *Ibid.*, 61.
28. *Ibid.*, 253.
29. *Ibid.*, 268.
30. Field Manual (FM) 6-27/Marine Corps Tactical Publication 11-10C, *The Commander's Handbook on the Law of Land Warfare* (U.S. GPO, August 2019), para. 2-76, [https://armypubs.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/ARN19354\\_FM%206-27%20\\_C1\\_FINAL\\_WEB\\_v2.pdf](https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN19354_FM%206-27%20_C1_FINAL_WEB_v2.pdf).
31. Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 4th ed. (Cambridge University Press, 2022), 181.
32. *Ibid.*
33. "Different operations and phases of operations may require tighter or more relaxed control over subordinate elements than other phases." See ADP 6-0, *Mission Command*, para. 1-21-1-23, 1-25.
34. *Ibid.*, para. 1-53.
35. *Ibid.*, Glossary-2.
36. *Ibid.*, para. 1-22.
37. FM 6-27, *The Commander's Handbook on the Law of Land Warfare*, para. 2-76.
38. See, for example, "General Petraeus Issues Updated Tactical Directive, Emphasizes 'Disciplined Use of Force,'" Defense Visual Information Distribution Service, 4 August 2010, <https://www.dvidshub.net/news/53931/gen-petraeus-issues-updated-tactical-directive-emphasizes-disciplined-use-force>.
39. *Ibid.*
40. *Ibid.*
41. Joseph Martin, "Commander's Perspective: CJFLCC Operations in Iraq," News from the Front (Center for Army Lessons Learned, 26 October 2017), 4, <https://api.army.mil/e2c/downloads/2023/01/31/f6f20311/insights-from-mg-martin-cg-1id-oct-17-public.pdf>.
42. *Ibid.*
43. *Ibid.*
44. *Ibid.*, 2.
45. Joint Readiness Training Center (JRTC), *Ethical Bedrock Vignettes, Law of Armed Conflict in Large Scale Combat Operations* (JRTC, n.d.).
46. Laneka A. West, "An Analysis of the Al Firdos Bunker Strike" (monograph, School of Advanced Military Studies, 2020), 28-29, <https://apps.dtic.mil/sti/pdfs/AD1159953.pdf>.
47. *Ibid.*, 29.
48. *Ibid.*, 30-31.
49. *Ibid.*, 29.
50. *Ibid.*, 30.
51. *Ibid.*
52. *Ibid.*
53. "The Gulf War: Operation Desert Storm," NBC Nightly News, 13 February 1991, 5:32, <https://www.youtube.com/watch?v=HZbjpT8UGeQ>.
54. U.S. Air Force Doctrine Publication 3-70, *Strategic Attack* (U.S. GPO, 22 November 2021), 30.
55. Office of General Counsel, *DOD Law of War Manual*, 259.
56. *Ibid.*, para. 5.12.3. "A moral, ethical command climate in combat that inculcates and maintains U.S. values despite the difficulties of the mission or the particular area of operations is the single most important factor in preventing civilian casualties, ensuring civilian casualty reporting, and appropriately addressing reported incidents." Defense Legal Policy Board, *Report of the Subcommittee on Military Justice in Combat Zones* (DOD, 30 May 2013), 60, <https://civiliansinconflict.org/wp-content/uploads/2017/09/20130531-Subcommittee-Report-REPORT-OF-THE-SUBCOMMITTEE-ON-MILITARY-JUSTICE-IN-COMBAT-ZONES-31-May-13-2.pdf>.
57. Office of General Counsel, *DOD Law of War Manual*, 253.
58. A technique to reinforce this discussion is to include vignettes as part of rehearsals (e.g., combined arms, fires) that are conducted just prior to the commencement of operations.