

Multinational Rules of Engagement: Caveats and Friction

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I. Introduction

*Multinational operations have become the standard for engagement worldwide. From the Army's beginnings in the revolution through most of the 20th century and into the 21st century, we've seen the complexity of operations magnified by the increasing numbers of nations committing resources for the cause of stability and peace in the world. Commanders at all levels must be skilled at dealing with these multinational partners.*¹

Modern military operations are rarely unilateral efforts, and multinational rules of engagement are an important aspect of these operations. Multinational operations are on the rise as nations seek multinational support and multinational legitimacy to resolve threats to peace and security. Oftentimes, these operations involve new partnerships with nations outside of traditional alliances. This dynamic creates additional challenges for commanders and their legal advisors.² In particular, multinational operations are fraught with friction related to rules of engagement (ROE).

National governments may place restrictions on how their country's forces support a particular operation with ground troops or air support.³ These restrictions, also known as caveats, cover a broad range of areas including rules of engagement and types of operations. In addition to caveats,

nations may have differing interpretations of international law, especially in the realm of self defense.⁴ With these national law and policy influences in mind, nations often experience substantial difficulty in drafting and applying a common set of rules of engagement. Judge advocates deployed to a multinational operation must be aware of the caveats and interpretation issues, as well as know how to assist the commander in alleviating the corresponding friction to enable mission accomplishment.

This article provides guidance for judge advocates to alleviate this friction by focusing on three key areas. First, judge advocates must understand the shifting nature of caveats, both declared and undeclared, and the impacts these have on mission planning and execution. Next, judge advocates must be cognizant of other countries' different interpretations and policies related to self defense. Finally, judge advocates supporting a multinational operation must be prepared to assist commanders⁵ with ROE training related to national caveats and multinational self defense policies and interpretations.

II. Multinational ROE Friction Point—National Caveats, Declared and Undeclared

*While there will be nuances particular to each country's rules of engagement, the "strings" attached to one nation's forces unfairly burden others and have done real harm in Afghanistan.*⁶

Nations may be willing to support multinational military operations, but such support often comes with restrictions commonly known as national caveats. National caveats are restrictions imposed by national governments on their armed forces' operations.⁷ Caveats are common in NATO

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¹ U. S. DEP'T OF ARMY, FIELD MANUAL 3-16, THE ARMY IN MULTINATIONAL OPERATIONS foreword (20 May 2010) [hereinafter FM 3-16].

² *Id.* More nations are starting to contribute to stability operations and contributions of Jordan, Mongolia, Korea, and Singapore to the NATO Training Mission-Afghanistan reinforce this trend. See INT'L SEC. ASSISTANCE FORCE, <http://www.isaf.nato.int/subordinate-commands/nato-training-mission-afghanistan/index.php> (last visited May 13, 2013).

³ VINCENT MORELLI & PAUL BELKIN, CONGRESSIONAL RESEARCH SERV. RL 33627, NATO IN AFGHANISTAN: A TEST OF THE TRANSATLANTIC ALLIANCE 10 (2009).

⁴ COMMANDER ALAN COLE ET AL., RULES OF ENGAGEMENT HANDBOOK 3 (2009), available at <http://www.usnwc.edu/getattachment/7b0d0f70-bb07-48f2-af0a-7474e92d0bb0/San-Remo-ROE-Handbook.aspx>.

⁵ The commanders are responsible for training their Soldiers on Rules of Engagement (ROE) for military operations. Judge advocates, however, should assist the commanders with empowering small unit leaders with the ability to train Soldiers at the platoon and squad levels. See Major Winston S. Williams, Jr., *Training the Rules of Engagement for the Counterinsurgency Fight*, ARMY LAW., July 2012, at 42, 45.

⁶ Donna Miles, Armed Forces Press Serv., *Gates: NATO Must Increase Assets, Cut Caveats in Afghanistan*, U.S. DEP'T OF DEF. (Oct. 25, 2007), www.defense.gov/newsarticle.aspx?ID=47936.

⁷ North Atlantic Treaty Org., P.A. Res. 336, Nov. 15, 2005 [hereinafter P.A. Res. 336], available at <http://www.nato-pa.int/Default.asp?CAT2=1458&>

operations and can be a source of friction.⁸ Commanders have to work within the constraints of previously known and declared caveats and quickly adjust their plans when an undeclared caveat arises during the mission planning process.

Most caveats are declared but even these pose challenges for commanders. Declared caveats are established up front by a national government and are known by the multinational commander early on in the deployment.⁹ Examples of declared caveats include geographical limitations and combat operation prohibitions. In Afghanistan, “[a]s many as nineteen nations impose[d] geographic limits on where their troops can operate.”¹⁰ These limits create “planning and execution problems for commanders on the ground.”¹¹ Even if a nation’s government does not impose a geographic limit on its forces, it may prohibit its forces from conducting offensive operations. This type of prohibition allows them to use force only in self defense.¹²

Many nations involved in Afghanistan are not allowed to participate in offensive combat operations. This may lead to dire consequences for commanders. In Afghanistan, for example, *Operation Medusa*¹³ nearly failed when Canadian forces could not get the necessary support from other nations because of their national caveats related to combat

operations.¹⁴ In another example, a routine provincial reconstruction mission experienced the calamitous consequences of national caveats. In this example,

[a]n attack on the Norwegian-Finnish PRT in normally tranquil Meymaneh, in western Afghanistan, in February 2006 had given an indication of an emerging problem: the need for a rapid military response capability for rescue operations. When the PRT was attacked, no NATO combat forces were in the region to protect the ISAF personnel. Other NATO forces that were nearby had caveats prohibiting their use in combat operations. Eventually a British force was found to help end the attack on the PRT.¹⁵

In contrast to declared caveats, undeclared caveats are those caveats that are not well documented in advance and often emerge during an operation.¹⁶ The commander may not know of an undeclared caveat until time for mission execution. For example, a commander may give an order to “move a given set of national forces only to be refused unexpectedly”¹⁷ as a result of a previously undeclared caveat. Undeclared caveats may also result from differing interpretations of host nation policies and the international law of self defense.¹⁸

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See also FM 3-16, *supra* note 1, para. 1-16.

⁸ MORELLI & BELKIN, *supra* note 3, at 10 (stating “[w]hile caveats in themselves do not generally prohibit the kinds of operations NATO forces can engage in, caveats do pose difficult problems for commanders who seek maximum flexibility in utilizing troops under their command”). National caveats were a point of friction in Kosovo when the caveats prevented the commander from deploying NATO forces to confront ethnic riots, which led to many casualties. Daniel Sewer, *Kosovo: Status with Standards*, U.S. INST. OF PEACE, Apr. 2004, available at <http://www.usip.org/resources/kosovo-status-standards> (stating that “national caveats in some cases prohibited crowd control or deployment outside a predefined area”).

⁹ P.A. Res. 336, *supra* note 7.

¹⁰ FRANK COOK, NATO PARLIAMENTARY ASSEMBLY COMMITTEE REPORT, NATO OPERATIONS: CURRENT PRIORITIES AND LESSONS LEARNED (2008) [hereinafter NATO PARLIAMENTARY ASSEMBLY COMM. REP.], available at <http://www.nato-pa.int/Default.asp?SHORTCUT=1476>.

¹¹ *Id.*

¹² MORELLI & BELKIN, *supra* note 3, at 10.

¹³ *Operation Medusa* was a “two-week offensive to push Taliban remnants from southern Afghanistan and pave the way for reconstruction and development.” David McKeeby, *NATO’s Operation Medusa Pushing Taliban from Southern Kandahar*, IIP DIGITAL: U.S. DEP’T OF STATE (Sep. 18 2006), <http://iipdigital.usembassy.gov/st/english/article/2006/09/20060918160151idybeekcm0.9616358.html#axzz2U2ImKvGA>.

III. Multinational ROE Friction Point—Differing Interpretations of Self Defense

*Self-defence is available in all situations, including armed conflict. National laws differ on the definition and content of the right of self-defence [sic]. As a consequence, individuals and units will exercise this right in accordance with their respective national law.*¹⁹

¹⁴ 453 PARL. DEB., H.C. (2006) 1249 (U.K.), available at <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm061130/debtext/61130-0009.htm>.

¹⁵ MORELLI & BELKIN, *supra* note 3, at 16.

¹⁶ NATO PARLIAMENTARY ASSEMBLY COMM. REP., *supra* note 10.

¹⁷ *Id.*

¹⁸ Ctr. for Law & Military Operations, The Judge Advocate Gen.’s Sch., U.S. Army, After Action Report, 10th Mountain Division, Operation Enduring Freedom, 2010–2011, at 4 (15 Nov. 2011) [hereinafter 10th Mtn. Div. AAR].

¹⁹ COLE ET AL., *supra* note 4, at 5.

All nations recognize the right of self defense in armed conflict.²⁰ The nations that provide support to multinational operations generally agree on a common definition of self defense, which is “the use of force to defend against *attack* or imminent *attack*.”²¹ Within this common definition, however, there are multiple interpretations of what the words mean.

The difficulty arises for U.S. forces with the definition of *imminent* and hostile act/hostile intent terminology. Specifically, the U.S. Standing Rules of Engagement (SROE)²² defines “imminent,” “hostile act” and “hostile intent” differently from the way many other nations do. Although multinational ROE govern many of the operations, U.S. forces still follow the SROE for self defense.

When U.S. forces are under the operational control (OPCON) or tactical control (TACON) of a multinational force, they follow the multinational ROE for mission accomplishment, if authorized by the Secretary of Defense.²³ The SROE, however, state that “U.S. forces retain the right of self defense,” and the United States will continue to use its own rules and the SROE definitions for self defense.²⁴ Judge advocates must understand the SROE definitions of these terms and how these definitions differ from those of many multinational partners.

The SROE define “hostile act” as “an attack or other use of force against the United States, U.S. forces or other designated persons or property.”²⁵ Hostile intent is the “threat of imminent use of force against the United States, U.S. forces or other designated persons or property.”²⁶ The

SROE, however, does not directly define “imminent” but states:

[t]he determination of whether the use of force against U.S. forces is imminent will be based on an assessment of all the facts and circumstances known to U.S. forces at the time and may be made at any level. Imminent does not necessarily mean immediate or instantaneous.²⁷

Although the SROE do not describe what constitutes an imminent threat, they do indicate that “imminent” need not mean immediate or instantaneous. This distinction conflicts with most multinational partners’ rules.

The NATO ROE’s definition of “imminent,” which is the consensus definition for most nations, defines “imminent” as creating a need to defend that is “manifest, instant, and overwhelming.”²⁸ This difference may hinder a multinational partner’s ability to support U.S. forces. For example, if a U.S. force has close air support from a NATO partner, the NATO partner will only respond to immediate threats even if the U.S. force perceives less immediate threats to be “imminent” as defined in the SROE.

Nations also use the terms “hostile act” and “hostile intent” differently. Some nations, like the United States, use these terms as the basis for the use of force in self defense. Other nations use them to justify offensive military operations.²⁹ So, if a U.S. force observes a hostile act and reports this information to the NATO ally providing close air support, the U.S. force may not receive immediate lethal support. The ally may interpret the term according to its own definitions and be seeking approval for an offensive operation instead of responding immediately in self defense. This situation is easy to remedy by using the right terminology, but a unit supporting multinational operations must be prepared through proper training and planning to avoid these perilous situations.

²⁰ *Id.* (stating that “[i]nternational law and the domestic laws of all nations recognise a right of self-defence . . .”).

²¹ *Id.*

²² The SROE provides “implementation guidance on the application of force for mission accomplishment and the exercise of self defense.” CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 3121.01B, STANDING RULES OF ENGAGEMENT/STANDING RULES FOR THE USE OF FORCE FOR U.S. FORCES (13 June 2005) [hereinafter CJCSI 3121.01B].

²³ *Id.* Operational Control gives the commander “authority to perform those functions of command over subordinate forces involving organizing and employing commands and forces, assigning tasks, designating objectives, and giving authoritative direction necessary to accomplish the mission . . .” U.S. DEP’T OF DEF., JOINT PUB. 1-02, DICTIONARY OF MILITARY AND ASSOCIATED TERMS, 206 (15 Apr. 2013) [hereinafter JOINT PUB. 1-02]. Tactical Control gives the commander “authority over forces that is limited to the detailed direction and control of movements or maneuvers within the operational area necessary to accomplish missions or tasks assigned . . .” *Id.*

²⁴ CJCSI 3121.01B, *supra* note 22. When U.S. forces respond to a hostile act or hostile intent, they will follow the SROE and not the multinational ROE.

²⁵ *Id.* at A-3.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Major John J. Merriam, *Natural Law and Self-Defense*, 206 MIL. L. REV. 43, 78 (2010) (citing North Atlantic Treaty Organization, NATO MC 362/1, NATO Rules of Engagement (2003)). Most nations follow this definition of imminence which derives from customary international law related to national self defense.

²⁹ COLE ET AL., *supra* note 4, at 3. Basically, these nations use hostile act and hostile intent as basis to conduct offensive operations. Offensive operations often require higher level approval that is not within the authority of the commander on the scene.

IV. Multinational Rules of Engagement Training and Planning Lessons Learned

*Judge Advocates should ensure ROE training includes reference to multinational partner ROE, where relevant. Where security caveats permit, Judge Advocates should consider assisting other multinational Judge Advocates in their ROE training by sharing vignettes . . .*³⁰

This article has identified two primary sources of multinational ROE friction; national caveats (declared and undeclared), and differing interpretations and national policies related to self defense. Judge advocates can assist their commanders with alleviating these frictions with proper ROE training and mission planning. Pre-deployment ROE training that incorporates routine national caveats and multinational partner interpretations is the first step in alleviating this friction.

Although the multinational ROE may not be available to units for pre-deployment phase training, several resources are available to help judge advocates prepare vignettes prior to deployment. First, the NATO ROE is a good resource, containing many of the definitions our allies use for self defense. Second, the San Remo's *Handbook on Rules of Engagement* contains good background information on multinational views on self defense and ROE.³¹ These sources, along with the *ROE Vignettes Handbook*,³² can help commanders and judge advocates develop "realistic and rigorous scenario- or vignette-driven training exercises"³³ for staffs and Soldiers.

Soldiers must understand the different constraints multinational partners have related to self defense. Thus, ROE training should incorporate vignettes that explain the caveats of partner nations and the terminology these nations use for actions in self defense. Also, staff at each level needs multinational ROE training for mission planning and execution. The staff is the entity that synchronizes assets, which often include multinational air support and soldiers. For this reason, judge advocates should develop vignettes that are unique to staff operations, especially as these relate to self defense/troops-in-contact situations.³⁴ These vignettes

should include situations where caveats restrict a multinational partner to specific geographical areas and preclude offensive operations. This training will help the staff develop battle drills³⁵ and standard operating procedures (SOPs) for operations in theater.

Standing operating procedures are indispensable for successful interoperability in a multinational operation. The staff should develop SOPs that are easy to understand and address multinational procedures, not single-nation procedures.³⁶ These SOPs must be flexible to account for changes to multinational assets and their national caveats.

For example, most U.S. forces arrive in theater with a set of SOPs that cover a range of actions to include reacting to troops-in-contact situations. One SOP will have a set of steps for the staff to go through to provide close air support or other indirect fire support to the unit on the ground. This type of SOP needs to be modified to incorporate the multinational terminology required by whichever multinational partner provides close air or indirect fire support. To properly assist the staff with preparing for these situations, judge advocates should play an active role in both pre-deployment and in-theater planning.

To accomplish this proactive support, judge advocates must know their role in the unit's planning cycle. Although units have different procedures for planning, all Army units use the military decision making process (MDMP)³⁷ for pre-deployment and in-theater planning. One of the first steps in this process is mission analysis, and identifying constraints is key to this phase. A constraint is a restriction placed on the command that inhibits its freedom of action.³⁸ A caveat to the multinational ROE is a constraint the commander needs to know during mission analysis to properly visualize

(Brad Adams et al. eds., Sept. 2008). These situations often involve attacks or imminent attacks on U.S. forces, which justify the use of force in self defense.

³⁵ A battle drill is

a collective action, executed by a platoon or smaller element, without the application of a deliberate decision-making process. The action is vital to success in combat or critical to preserve life. The drill is initiated on a cue, such as an enemy action or your leader's order, and is a trained response to the that stimulus.

U. S. DEP'T OF ARMY, FIELD MANUAL 3-21.75, THE WARRIOR ETHOS AND SOLDIER COMBAT SKILLS para. 1-7 (28 Jan. 2008).

³⁶ FM 3-16, *supra* note 1, para. 2-42.

³⁷ U. S. DEP'T OF ARMY, DOCTRINE REFERENCE PUB. 5-0, THE OPERATIONS PROCESS para. 32 (17 May 2012).

³⁸ U. S. DEP'T OF ARMY, ARMY TACTICS, TECHNIQUES AND PROCEDURES NO. 5-0.1, COMMAND AND STAFF OFFICER GUIDE para. 4-8 (14 Sept. 2011).

³⁰ CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCHOOL, FORGED IN THE FIRE: LEGAL LESSONS LEARNED DURING MILITARY OPERATIONS, VOL. I: MAJOR COMBAT OPERATIONS (1994-2008), at 347 (1 Sept. 2008).

³¹ COLE ET AL., *supra* note 4, at 5.

³² CTR. FOR ARMY LESSONS LEARNED, U.S. ARMY COMBINED ARMS CTR., ROE VIGNETTES, NO. 11-26 (May 2011), available at <https://call.army.mil>.

³³ FM 3-16, *supra* note 1, para. 3-8.

³⁴ Troops-in-contact (TIC) is "an unplanned engagement occurring when US or NATO ground forces unexpectedly come into contact with insurgent forces." Marc Garlasco, *Troops in Contact*, in HUM. RTS. WATCH 29, 30

the situation. The judge advocate, as the command's ROE expert, is responsible for providing this information during mission analysis. Without it, the plan may be derailed by an unforeseen constraint. Unfortunately, the unit may not know the full set of national caveats during the pre-deployment planning; therefore, the unit will have to incorporate these caveats during the in-theater planning cycle.

Most units continue to use MDMP in theater but in an expedited manner. The process is still the same, but judge advocates must continue to provide the most accurate list of national caveats and changes to them during each planning cycle. In order to accomplish this, judge advocates must know where to find the current list of national caveats. In Afghanistan, ISAF maintained a database of caveats but multinational partners did not always agree on its accuracy.³⁹ Thus, judge advocates have to maintain situational awareness on caveats by tracking the caveat database and working directly with multinational legal advisors.⁴⁰

Also, subordinate units at the battalion and company level may experience mission impediments due to undeclared caveats raised during the execution of a particular mission. Judge advocates should encourage their commanders to include undeclared caveats or new interpretations of declared caveats in the list of Friendly Force Information Requirements (FFIR).⁴¹ By doing this, the judge advocate and the commander will get bottom-up feedback on the challenges Soldiers are experiencing in working with multinational partners. This type of proactive legal support by judge advocates in training and planning can provide the commander the necessary tools to mitigate the friction from multinational ROE.

V. Conclusion

*Multinational operations are affected by the political agendas of participating countries. Many nations will not, or are reluctant to, relinquish command of their forces to other countries.*⁴²

Multinational operations are the modern approach to eliminating threats to peace and security and bringing stability to war-torn regions. The domestic political landscape will affect the support a particular nation brings to the multinational fight and can influence the multinational rules of engagement. Differing national restrictions and policy interpretations on self defense will continue to cause friction amongst allied nations. Alleviating ROE frictions must be a priority for commanders and judge advocates. As the commander's subject matter expert on the ROE,⁴³ judge advocates play a key role in mitigating this friction. They can do so by assisting commanders with pre-deployment training and planning to prepare their units for the complex multinational environment. Also, in theater, judge advocates must diligently keep track of changes to existing caveats, new interpretations of multinational ROE by coalition partners, and other unforeseen changes. Once U.S. forces are able to alleviate the friction, they can refocus on what the multinational partners *can* do to support the fight and not on their limitations.

³⁹ 10th Mtn. Div. AAR, *supra* note 18, at 4.

⁴⁰ *Id.*

⁴¹ FFIR is "information the commander and staff need to understand the status of friendly force and supporting capabilities." JOINT PUB. 1-02, *supra* note 23, at 206.

⁴² FM 3-16, *supra* note 1, para. 2-21.

⁴³ U. S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 7-8 (18 Mar. 2013).