



# **FM 1-04**

## **LEGAL SUPPORT TO THE OPERATIONAL ARMY**

**MARCH 2013**

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# Legal Support to the Operational Army

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**\*This publication supersedes FM 1-04, dated 26 January 2012.**

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## Preface

FM 1-04, *Legal Support to the Operational Army*, is the Army's manual for operational legal doctrine. This manual provides authoritative doctrine and practical guidance for commanders, judge advocates, legal administrators, and paralegal Soldiers across the spectrum of conflict. It outlines how The Judge Advocate General's Corps (JAGC) will be organized in accordance with the Army's modular force design. It also discusses the delivery of legal support to the modular force.

This manual does not address the law of armed conflict, The Hague Conventions, or the Geneva Conventions in detail. For a more comprehensive treatment of those areas, refer to FM 27-10, *The Law of Land Warfare*.

FM 1-04 applies to the Active Army, the Army National Guard/Army National Guard of the United States, and U.S. Army Reserve unless otherwise stated.

The proponent for this publication is the Future Concepts Directorate, The Judge Advocate General's Legal Center and School (TJAGLCS), U.S. Army. Send written comments and recommendations on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to Commander, The Judge Advocate General's Legal Center and School, U.S. Army, ATTN: CTR-FC, 600 Massie Road, Charlottesville, VA 22903-1781. Send comments and recommendations by e-mail to [usarmy.pentagon.hqda-tjagles.list.tjagles-doctrine@mail.mil](mailto:usarmy.pentagon.hqda-tjagles.list.tjagles-doctrine@mail.mil). Follow the DA Form 2028 format or submit an electronic DA Form 2028.

# Introduction

This manual establishes a foundation for Judge Advocate General's Corps (JAGC) personnel to build upon to provide principled counsel and mission focused legal support to the operational Army. It establishes an understanding of the roles and responsibilities that JAGC personnel have both between different legal offices at different levels of command and between the legal section and the staff of the supported command; all in support of the commander and the Army.

The purpose of this manual is to assist commanders and judge advocates in assigning roles and responsibilities for legal support in the unique areas of operations encountered in this era of persistent conflict. This manual is not intended to provide detailed guidance on every situation that judge advocates will encounter in a deployed environment whether overseas or within the United States. That is not the goal. Just as Army leaders and forces must respond to a broad range of threats under conditions of uncertainty by exercising operational adaptability to accomplish missions, so too must judge advocates.

Operational adaptability requires judge advocates, legal administrators, and paralegal specialists to understand the situation in width, depth, and context, and then to assist the command by providing sound legal advice and support across the core legal disciplines. Every operation is different, and each one requires its own unique legal support. As such, commanders and judge advocates will have to work together to task-organize legal support for operations in a way that makes sense and helps accomplish the mission.

This edition of FM 1-04 provides doctrine on legal support across the range of operations and the provision of legal support in specific types or aspects of operations. The appendixes describe newly created legal structure in the Army's Reserve Component and the format to capture lessons learned.

**Chapter 1** provides an overview of legal support to operations. This chapter discusses the evolution of operational law and introduces the various roles that JAGC Soldiers perform in support of operations.

**Chapter 2** discusses certain fundamental concepts of Army doctrine. It introduces a foundation of unified land operations and decisive action as well as operational themes, the warfighting functions, and the operations process. This chapter concludes with discussions of working groups and running estimates.

**Chapter 3** discusses the requirements for legal support across the modular force as a result of transformation. It describes where JAGC Soldiers are assigned throughout the modular force. It concludes with a description of necessary materiel requirements to provide legal support.

**Chapter 4** describes the roles, responsibilities, and working relationships of JAGC organizations and personnel assigned to the operating force. This chapter outlines the doctrinal missions of legal sections and offices at various levels of command. It also describes the working relationships between brigade legal sections and the division Office of the Staff Judge Advocate (OSJA), and the OSJA with the trial defense service. This chapter concludes with a discussion of other JAGC organizational support and personnel integration to support training JAGC personnel assigned to the operational force.

**Chapter 5** describes the six core legal disciplines of military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.

**Chapter 6** provides an introduction to the basics of planning and the role of judge advocates in this process. Descriptions of design and the military decisionmaking process are included.

**Chapter 7** discusses rules of engagement, rules for the use of force, and targeting.

**Chapter 8** discusses detainee operations.

**Chapter 9** discusses legal support to stability operations.

**Chapter 10** discusses legal considerations in rule of law activities.

**Chapter 11** discusses legal support in civil affairs units.

**Chapter 12** provides a synopsis of legal issues in defense support of civil authorities operations.

**Chapter 13** discusses financial management and deployment contracting.

**Chapter 14** discusses legal support to Army special operations forces.

**Chapter 15** discusses security force assistance operations and legal support to these missions.

Three appendixes supplement the chapters of this manual. Appendix A describes the newly created Army Reserve Legal Command and the organization of legal support. Appendix B describes the legal structure within the National Guard. A format for judge advocates to capture lessons learned during deployments is contained in appendix C.

This manual continues to reflect judge advocates increasingly operating individually, or in smaller teams, in support of split-based operations, specialized operational cells, and headquarters required to run mobile, tailored forces. Judge advocates train and prepare to operate independently across the spectrum of conflict, standing by the commander's side. To succeed in today's operational environment, judge advocates are master general practitioners effective in their roles as lawyers, ethics advisors, counselors, and rule of law practitioners. Judge advocates increase their knowledge as Soldiers and leaders. Judge advocates work proactively to promote the mission and serve Army personnel and their families.

Commanders, supported by staff judge advocates (SJAs), are responsible for training and supporting judge advocates and their subordinates to ensure robust legal support to operations. Training is conducted according to the Army's training principles including training for combat proficiency, under realistic conditions, to standard, and in accordance with appropriate doctrine. The training plan includes training that integrates and trains JAGC personnel with the units they support in various environments, settings, and exercises. Without active, realistic training, JAGC Soldiers will not develop the Soldier and lawyer skills needed to provide legal support to operations.

This version of FM 1-04 replaces the January 2012 version. However, it makes no substantive changes to the January 2012 version, but merely moves appendices to chapters in accordance with Doctrine 2015 requirements.



## Chapter 1

# Legal Support to Operations: An Overview

This chapter provides an overview of the Judge Advocate General's Corps legal support to operations. First, it discusses legal issues in operations. It then describes the evolution of operational law. Lastly, it outlines the various roles that Judge Advocate General's Corps Soldiers have in support of operations.

## THE JUDGE ADVOCATE GENERAL'S CORPS MISSION

1-1. The mission of the Judge Advocate General's Corps (JAGC) is to develop, employ, and retain one team of proactive professionals, forged by the Warrior Ethos, who deliver principled counsel and mission-focused legal services to the Army and the Nation.

## LEGAL ISSUES IN OPERATIONS

1-2. Legal issues are a fundamental part of modern military operations. Assigning JAGC Soldiers directly to warfighting units has become commonplace. Leaders have recognized that plans, initiatives, and decisions—even those made at the tactical level—can have far-reaching strategic and policy implications in complex operational environments.

1-3. While the legal intensity of military operations is a relatively recent phenomenon, lawyers in uniform are not new. In June 1775, the Continental Congress selected Boston attorney, William Tudor, to serve as Judge Advocate of the Army. Tudor was assigned to General George Washington's staff where he helped Washington regulate force discipline and advised him on military justice matters. In this regard, the Army lawyer's role has remained unchanged. Judge advocates still advise commanders on military justice matters and issues related to the good order and discipline of the force. The judge advocate's role in support of military operations, however, has changed dramatically.

1-4. Judge advocates serve at all levels in today's area of operations and advise commanders on a wide variety of operational legal issues. These issues include the law of war, rules of engagement, lethal and nonlethal targeting, treatment of detainees and noncombatants, fiscal law, foreign claims, contingency contracting, rule of law, the conduct of investigations, and military justice. They also serve as staff officers and on boards, centers, cells, and working groups, where they fully participate in the planning process within their respective headquarters.

## THE EVOLUTION OF OPERATIONAL LAW

1-5. Operational law encompasses all relevant aspects of military law that affect the conduct of operations and is now recognized as a core legal discipline. Throughout most of the Army's history, however, the judge advocate's role during operations centered on the practice of military justice, not operational law. This paradigm began to shift in 1964, when Colonel George Prugh, staff judge advocate (SJA) for Military Assistance Command Vietnam, expanded the role of his judge advocates. Under Colonel Prugh, the role included determining the status of captured enemy personnel, investigating and reporting of war crimes, and assisting the South Vietnamese with programs designed to help control government resources important to the enemy.

1-6. By 1966, judge advocates in Vietnam had expanded their practice to include foreign claims, international law, and initiatives to help reform the South Vietnamese judicial system. As U.S. troop levels in Vietnam expanded, attorneys were assigned to division and brigade level headquarters. In a precursor to what would one day be common practice, these lawyers were deployed forward, providing legal assistance to Soldiers or trying courts-martial in outposts and fire bases throughout South Vietnam.

1-7. Operational legal practice matured significantly in the post-Vietnam era. In 1974, the Department of Defense (DOD) implemented the DOD Law of War Program. This initiative, a result of the Peers Report detailing American atrocities at My Lai, mandated that military lawyers would now review all operation plans, policies, and directives for compliance with the law of war. Based on the program's requirements, judge advocates became members of planning staffs at various levels of command.

1-8. In 1983, JAGC Soldiers from the 82nd Airborne Division and XVIII Airborne Corps participated in Operation Urgent Fury in Grenada. Legal issues on the battlefield and the demand for judge advocate support in Grenada changed military legal practice forever. Among its many lessons learned, the Grenada operation demonstrated that Army lawyers could no longer focus on performing traditional peacetime legal functions in what had become a contingency oriented Army. Recognizing some of the training shortfalls identified by judge advocates during Urgent Fury, the Judge Advocate General's School created a formalized operational law curriculum with full-time operational law instructors. This initiative, first begun in 1986, was followed two years later by the creation of the Center for Law and Military Operations. This organization was dedicated to collecting and disseminating lessons learned by judge advocates participating in contingency operations. See appendix C for more information on the current techniques for capturing lessons learned.

1-9. Judge Advocate General's Corps Soldiers participated in military operations throughout the 1980s, including Operation Just Cause in Panama (1989). In 1990, a large number of JAGC Soldiers deployed in support of Operations Desert Shield and Desert Storm.

1-10. Legal support became an even more important aspect of military operations in the 1990s as the U.S. military embarked on several politically sensitive contingency missions. In support of these operations, JAGC Soldiers deployed to Somalia, Haiti, the Balkans, and Southwest Asia. During this period, the Army recognized the important and ever-expanding role of legal issues in operations. As a result, more legal issues were injected into training events and judge advocate observer/controllers were assigned to the Army's combat training centers. The first operational law observer/controller was assigned to the Joint Readiness Training Center in 1995. Today judge advocate observer/controllers are permanent fixtures at all combat training centers, including the Mission Command Training Program.

1-11. Following the terrorist attacks of 11 September 2001, JAGC Soldiers have deployed in large numbers in support of operations in Afghanistan, Iraq, and elsewhere. Current operations continue to give rise to significant legal issues. As a result, judge advocates are in high demand in operations. As such, the practice of operational law has become an essential component of mission command. In the modular force design, brigade combat teams and support brigades include a brigade legal section headed by a judge advocate major. A brigade legal section offers legal capabilities once found only at the division level or higher. As a result, unit commanders can now draw on organic legal assets for real-time advice and expertise in all of the JAGC's core disciplines instead of having to reach back to higher echelons for legal support.

## **THE JUDGE ADVOCATE'S ROLE**

1-12. No matter the level of command to which assigned, judge advocates have several roles. They are counselors, advocates, and trusted advisors to commanders and Soldiers. They are Soldiers, leaders, and subject matter experts in all of the core legal disciplines. In every aspect of their professional lives, judge advocates serve the Army and the Nation with their expertise, dedication, and selflessness.

## **THE LEGAL ADMINISTRATOR'S ROLE**

1-13. The legal administrator is an integral part of the JAGC team. In addition to their well-recognized role as technical experts, legal administrators provide experience and leadership to their organizations that contribute significantly to mission accomplishment. Legal administrators also manage systems and resources for the delivery of legal services across the spectrum of conflict. They actively plan, prepare, and execute military legal operations. Finally, legal administrators mentor and guide officers, noncommissioned officers, enlisted Soldiers, and Army civilians. In general, however, the legal administrator assigned to an operational unit is expected to be a technical expert, legal office manager, advisor, and leader. Chapter 4

discusses the day-to-day responsibilities of legal administrators assigned to SJA offices. (DA Pam 611-21 discusses the duties of legal administrators in detail.)

## **THE PARALEGAL SOLDIER'S ROLE**

1-14. Today's paralegal Soldiers are highly trained professionals with a critical role of delivering legal services to operational units. Given the Army's high tempo and the complex, often decentralized nature of modern operations, the knowledge, expertise, and dedication of paralegal Soldiers are indispensable.

1-15. For much of the Army's history, paralegal Soldiers were considered technical experts, not leaders or combat Soldiers. During World War II, for example, paralegal Soldiers held the ranks of technical sergeant or technician third through fifth class. As technicians, these Soldiers lacked the authority to give commands or orders. Consequently, the paralegal Soldiers who served during these years received little training in leadership or Soldier skills. In contrast, today's paralegal Soldier—while still a technical expert—is also a leader and a warrior. In addition to receiving technical instruction, paralegal Soldiers receive training in leadership and Soldier skills at every level of the Noncommissioned Officer Education System. The result is a confident, competent Soldier, warrior, and leader. This Soldier can provide not only superb legal support to operations, but also expertise to fight and win in any area of operations. (Chapter 4 details the duties of paralegal Soldiers assigned to SJA offices.)

## **THE CIVILIAN ATTORNEY'S ROLE**

1-16. Civilian attorneys play a critical role in providing legal support to the Army and the Nation. They serve as leaders and subject matter experts often providing valued continuity in the delivery of legal advice. Their professionalism and dedication allow for uninterrupted legal support across the Army regardless of the operational tempo.

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## **Chapter 2**

# **Fundamental Concepts of Army Doctrine**

This chapter discusses certain fundamental concepts of Army doctrine and explores some of the key legal issues in operations. It also outlines the types of operations. This chapter provides Judge Advocate General's Corps Soldiers with a working knowledge of important doctrinal concepts and a basic framework for identifying legal issues that may arise while planning and executing Army operations.

### **ARMY DOCTRINE FUNDAMENTAL CONCEPTS**

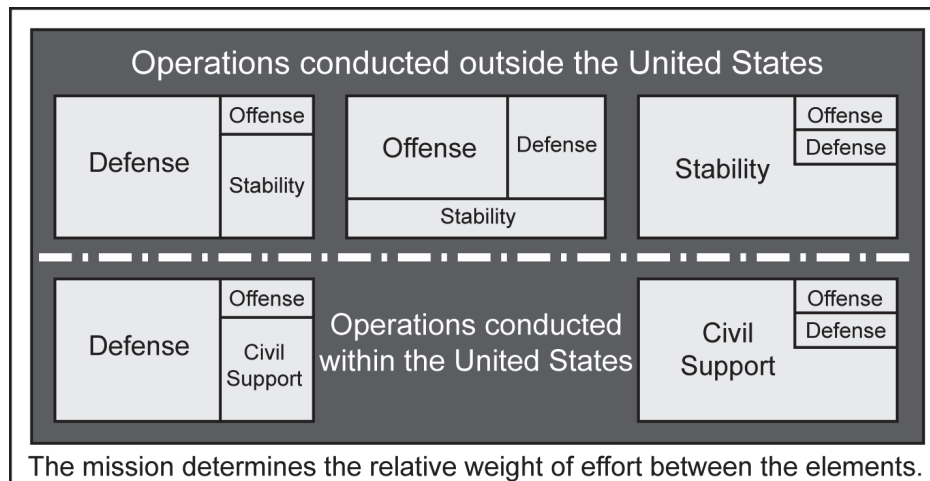
2-1. Legal support to operations involves its own set of unique challenges. Judge advocates look to certain fundamental concepts of Army doctrine to help them identify and address operational legal issues. These fundamental concepts are as follows:

- Decisive action and unified land operations.
- The warfighting functions.
- The operations process.
- Lines of effort and lines of operations
- Working groups

2-2. This chapter discusses the above listed fundamental concepts as they relate to legal support. Chapter 6 discusses the operations process activity of planning. Additional information can be found in FM 3-07, FM 3-90, and FM 5-0.

### **DECISIVE ACTION AND UNIFIED LAND OPERATIONS**

2-3. The Army's operating concept encompasses the basic approach taken by the Service in the conduct of unified land operations. Operations founded upon decisive action require simultaneous combinations of offensive, defensive, and stability or defense support of civil authorities tasks. It is through decisive action that the Army demonstrates its core competencies of combined arms maneuver and wide area security. (See figure 2-1.) In all operations, commanders seek to seize, retain, and exploit the initiative while synchronizing their actions to achieve success. Operations conducted outside the United States and its territories simultaneously combine three tasks—offense, defense, and stability. Within the United States and its territories, operations combine the elements of offense, defense, and defense support of civil authorities. Army forces operate using mutually supporting lethal and nonlethal capabilities based on thoroughly understanding all variables of the operational environment. Mission command that conveys commander's intent guides the adaptive use of Army forces.



**Figure 2-1. Decisive action**

2-4. Army forces use offensive and defensive operations to defeat the enemy on land. Simultaneously, Soldiers execute stability or defense support of civil authorities operations to interact with the people and civil authorities. Combinations of offensive, defensive, and stability operations are typical in campaigns and other operations conducted outside the United States. In some instances, combat may be continuous. In other cases, stability tasks may dominate; peace operations, peacetime military engagement, and some limited interventions focus almost exclusively on stability tasks. For example, foreign humanitarian assistance operations involve primarily stability tasks with minor defensive tasks and no offensive element. In most domestic operations, Army forces perform only defense support of civil authorities tasks. However, an extreme emergency, such as an attack by a hostile foreign power, may require simultaneous combinations of offensive, defensive, and defense support of civil authorities tasks.

2-5. The operational concept recognizes that current conflicts defy solution by military means alone and that landpower, while critical, is only part of each campaign. Success in future conflicts will require the protracted application of all the instruments of national power—diplomatic, informational, military, and economic. Because of this, decisive action equally weights tasks dealing with the population—stability or defense support of civil authorities—with those related to offensive and defensive operations. This parity is critical; it recognizes that 21st century conflict involves more than combat between armed opponents. While defeating the enemy with offensive and defensive operations, Army forces simultaneously shape the broader situation through nonlethal actions to restore security and normalcy to the local populace.

2-6. Each element—offense, defense, stability, and defense support of civil authorities—has its own doctrinal definition and its own particular legal issues. Because the elements of decisive action are usually conducted simultaneously, judge advocates prepare to provide legal support to operations across the spectrum of conflict.

2-7. Legal issues are numerous and often complex in unified land operations. Judge advocates must fully understand the legal authorities specific to their operations, including the international agreements and funding authorities and limitations that may be specific to a particular operation. U.S. forces often participate in operations with host-nation consent and, therefore, are often heavily governed by host-nation law. Effective judge advocates are versed in applicable host-nation law as well as familiar with status-of-forces agreements and other agreements or applicable diplomatic notes. They understand and are prepared to articulate the law of war as interpreted by the U.S. and other multinational partners. Any differences of interpretation affect the planning and execution of operations, especially if judge advocates contemplate the use of force. Judge advocates must be proactive and heavily involved in the planning phase of all operations. Judge advocates ensure commanders fully understand and account for these considerations during the planning of operations.

2-8. Defense support of civil authorities operations address the consequences of natural or man-made disasters, accidents, and incidents within the United States and its territories. Since these operations are

domestic in nature, most legal issues will revolve around properly using manpower, resources, and sustainment assets from the various organizations and agencies involved in the operation. Judge advocates advising on defense support of civil authorities operations should be familiar with the relevant Federal law, including the Posse Comitatus Act and related case law, and the rules for the use of force (RUF). See chapters 7 and 12 of this FM, FM 3-28, and the *Domestic Operational Law Handbook for Judge Advocates* for detailed discussions of legal issues frequently encountered in defense support of civil authorities operations.

## THE WARFIGHTING FUNCTIONS

2-9. A warfighting function is a group of tasks and systems (people, organizations, information, and processes) united by a common purpose that commanders use to accomplish missions and training objectives. The warfighting functions are the basis of combat power. Commanders employ the warfighting functions to conduct decisive action. Synchronized and applied to a mission, they become combined arms, and form combat power greater than the additive strength of each function individually. The warfighting functions are mission command, movement and maneuver, intelligence, fires, sustainment, and protection. When conducting operations, commanders work to synchronize each of the tasks and systems in the various warfighting functions at every level of command, from tactical to strategic. Judge advocates and paralegal Soldiers should use the warfighting functions as a template for reviewing and analyzing operation plans for legal issues. When Judge Advocate General's Corps (JAGC) personnel address legal issues within and across the warfighting functions, they set the conditions for mission accomplishment.

## MISSION COMMAND

2-10. The mission command warfighting function develops and integrates those activities enabling a commander to balance the art of command and the science of control.

2-11. Mission command magnifies leadership in land operations. It illuminates the leader's responsibility to understand, visualize, describe, direct, lead, and assess. It provides commanders and staff with a philosophy for operating in an uncertain environment as opposed to trying to create certainty and imposing order and control over a situation. It also recognizes that leaders command not only U.S. forces but also diverse international, nongovernmental, and host-nation partners.

2-12. Mission command supports an operationally adaptable Army that has both the authority and resources to operate effectively at all levels, under clear mission orders. It requires a thorough understanding of the operational environment, seeks adaptive teams capable of anticipating and managing transitions, and acknowledges that leaders must share risk across echelons to create opportunities. Mission command emphasizes the critical contributions of leaders at every echelon by establishing a mindset among leaders that the best understanding comes from the bottom up, not from the top down. It invokes the greatest possible freedom of action to subordinates.

2-13. Mission orders is a technique for developing orders that emphasizes to subordinates the results to be attained, not how they are to achieve them. It provides maximum freedom of action in determining how to best accomplish assigned missions.

2-14. Key to effective legal support to mission command is judge advocates who demonstrate initiative, integrate themselves into the staff, actively participate in the design and planning processes, and work to understand the operational environment. Developing the trust of the staff and supported subordinate commanders facilitates the judge advocate's role in supporting mission command.

2-15. With mission command's emphasis on critical leadership contributions at all levels, especially those of subordinate leaders, it is incumbent upon judge advocates to know and understand subordinate unit missions. This enables the judge advocate to anticipate and resolve legal issues that might arise. By proactively engaging subordinate commanders and staffs to assist in their mission planning and issue resolution, judge advocates maximize a unit's time spent on mission execution. This is especially true in the case of brigade legal sections with no organic legal support located at the subordinate battalions or companies.

2-16. As operations become more decentralized and more responsibility is vested in small-unit leaders, judge advocates and paralegal Soldiers will increasingly find themselves assigned or task-organized to smaller units and at lower levels of command.

2-17. Recent experience demonstrates that current and future operational environments will experience an increasingly rapid operating tempo. This rapid tempo impacts legal support. In providing legal support to fast-moving, decentralized operations, judge advocates and paralegal Soldiers may lack the time or the means to seek detailed guidance from senior leaders on complex legal issues. Judge advocates will often need to rely on their own expertise, intellect, and good judgment to provide timely, operational legal advice. They will also need to empower paralegal Soldiers by giving them a proactive role in providing operational legal support.

2-18. Soldier discipline is one component of the mission command warfighting function. During operations, discipline is regulated, enhanced, and enforced through various means, including orders, regulations, command policies, and the Uniform Code of Military Justice. Judge advocates should ask the following questions at a minimum:

- Are there general orders or other command policies in force in the operational area that will affect any aspect of the operation plan?
- Are there any status-of-forces or jurisdictional matters that need to be resolved in advance of the operation?
- Are there provisions in place for the delivery of military justice in the operational area once operations reach ready state?

## **MOVEMENT AND MANEUVER**

2-19. The movement and maneuver warfighting function revolves around tasks and systems that move forces to achieve a position of advantage in relation to the enemy. This includes employing forces in combination with direct or indirect fires, force projection into a given area, and measures taken to increase friendly mobility or deny the enemy freedom of movement (countermobility). Commanders use the movement and maneuver warfighting function to ensure that their forces are in the best position possible to capitalize on friendly strengths and exploit enemy weaknesses.

2-20. Like all of the warfighting functions, the movement and maneuver warfighting function involves its own set of unique legal issues. Judge advocates analyzing operation plans and orders should ask several questions when considering how the movement and maneuver warfighting function affects pending operations. Judge advocates should ask the following questions at a minimum—

- Does the plan entail the movement of friendly forces into an area with a large civilian population? If so, how will civilians be affected by the presence of friendly forces? If applicable, does the plan adequately address the likelihood that operations will result in large numbers of dislocated civilians?
- What precautions should the commander take to minimize injuries to noncombatants and collateral damage caused by the movement of friendly forces?
- Will civilian movement need to be curtailed or restricted? Will roadblocks, checkpoints, or curfews be necessary? What are the applicable rules of engagement (ROE) for Soldiers manning checkpoints or roadblocks?
- Does the operation plan call for using any countermobility measures to deny the enemy's movement? If so, what measures should the commander consider to prevent noncombatant casualties and minimize disruptions to civilian movement? If operating with multinational partners, are any countermobility measures prohibited, such as the use of scatterable mines?

## **INTELLIGENCE**

2-21. The intelligence warfighting function involves those tasks and systems that help commanders understand the operational environment, enemy, terrain, and civil considerations.

2-22. The legal issues related to the intelligence warfighting function are numerous; in fact, intelligence law has become a discrete area of expertise within the field of operational law. Judge advocates analyzing



intelligence-related legal issues in operation plans and orders should ask the following questions at a minimum:

- What collection methods are being proposed? Does the operation plan call for the collection of information by friendly forces such as scouts, long-range surveillance teams, or special operations forces? If so, are appropriate antifratricide control measures in place to ensure friendly forces do not fire on them? Under what ROE will these teams operate?
- Does the operation plan contemplate the use of human intelligence, signals intelligence, or some other means of collection, such as overflights by aircraft or the use of unmanned aircraft systems? Are there any legal considerations, restrictions, or prohibitions relevant to the use of these systems?
- What is the operation plan for gathering information from enemy prisoners of war and detainees? Does the operation plan address tactical questioning and interrogations? What provisions have been made to ensure Soldiers adhere to the proper standards for treatment of detainees?

## FIRES

2-23. The fires warfighting function is the related tasks and systems that provide collective and coordinated use of Army indirect fires and joint fires through the targeting process.

2-24. Due to the potentially devastating nature of their effects, the use of lethal fires—particularly indirect fires—is often closely regulated by the ROE and other control and coordination measures to minimize fratricide and collateral damage. When planning operations or reviewing completed operation plans and orders, judge advocates carefully review all aspects of the plan that deals with the use of fires to ensure that it aligns with ROE and the law of war. At the tactical level, judge advocates work proactively with commanders and fire support experts to ensure that plans include safeguards to help minimize collateral damage and reduce the risk of fratricide. Judge advocates analyzing the fires warfighting function should ask the following questions at a minimum:

- Are there provisions for the use of lethal fires contained in portions of the operation plan or order beyond the fire support annex (such as lethal fires by air defense or aviation assets)? If so, are these measures consistent with the ROE for the operation and the law of war?
- Are there any protected places, including cultural property, in the unit's area of operations? If so, where in the operation order are they specified (such as fires, special instructions, or civil affairs annexes)? Are they referenced in the ROE annex? What steps have been taken to ensure potential indirect fire targets or target areas have been deconflicted with protected places?
- What fire support coordination measures (restricted fire areas, no fire areas, or protected places) are in place to mitigate the risk of fratricide and collateral damage by lethal fires?
- Are there specific release authorities for direct and indirect fire systems in the ROE or in the unit's tactical standard operating procedures? If so, what is the plan for delegating authority in the event the authorizing commander is unavailable to make the decision?
- What is the blast radius and accuracy of particular available weapons systems? What are the fires procedures for both deliberate and hasty targeting?
- Are there provisions for the use of electronic warfare and is there an associated ROE? What is the impact on host-nation communications and if so, what are the legal implications?

## SUSTAINMENT

2-25. The sustainment warfighting function is the related tasks and systems that provide support and services to ensure freedom of action, extend operational reach, and prolong endurance. Sustainment is the provision of the logistics, personnel services (to include legal support), and health service support necessary to maintain operations until mission accomplishment.

2-26. Sustainment is the lifeblood of operations. Without sustainment—including health, legal, financial management, and all the other sustainment functions—Army forces could not deploy or conduct continuous operations. Many key legal issues are inherent in the sustainment warfighting function. They range from contingency contracting issues to applicable fiscal rules for providing medical support to

civilians and paying claims for property loss, injury, or death. (FM 4-02.12 discusses eligibility for care in U.S. Army medical treatment facilities.) Judge advocates can ask the following when analyzing this function:

- Does the operation plan call for contracting support? If so, where, when, and how much? If there is a contracting support integration plan, what does it say? Will goods or services be purchased from the local economy? If so, what types? To what extent can the commander use existing contract vehicles, including the logistics civil augmentation program and acquisition and cross-servicing agreements? Will it be necessary to lease land or facilities? The answers to these questions help the commander determine the amount and type of funds to use.
- Does the operation plan call for financial management support? If so, where are the G-8s and financial management units located? What types of funding sources will they use? Legal support may be critical in making purpose, time, and amount decisions to support command requirements.
- Might it be necessary to provide medical treatment to non-U.S. personnel? If so, what are the criteria for treatment? What are the fiscal law implications of providing medical treatment or humanitarian and civic assistance to non-U.S. personnel?
- Will U.S. forces be expected to ensure that civilians receive medical supplies, food, and other essential services?

## **PROTECTION**

2-27. *Protection* is the preservation of the effectiveness and survivability of mission-related military and nonmilitary personnel, equipment, facilities, information, and infrastructure deployed or located within or outside the boundaries of a given operational area (JP 3-0). The protection warfighting function consists of the related tasks and systems that preserve the force so the commander can apply maximum combat power. Preserving and protecting the force allows commanders to maintain combat power. The protection warfighting function also includes force health protection which consists of all measures to promote, improve, conserve, or restore the mental or physical well-being of Soldiers. The protection warfighting function entails numerous legal issues, many related to the use of force, such as ROE or the RUF. Both ROE and RUF provide rules that govern Soldiers' application of force for self-defense and mission accomplishment. ROE provide guidance on using force in combat or overseas military operations, while RUF govern the use of force in defense support of civil authorities operations. See chapter 7. Judge advocates analyzing the protection warfighting function should ask the following questions at a minimum:

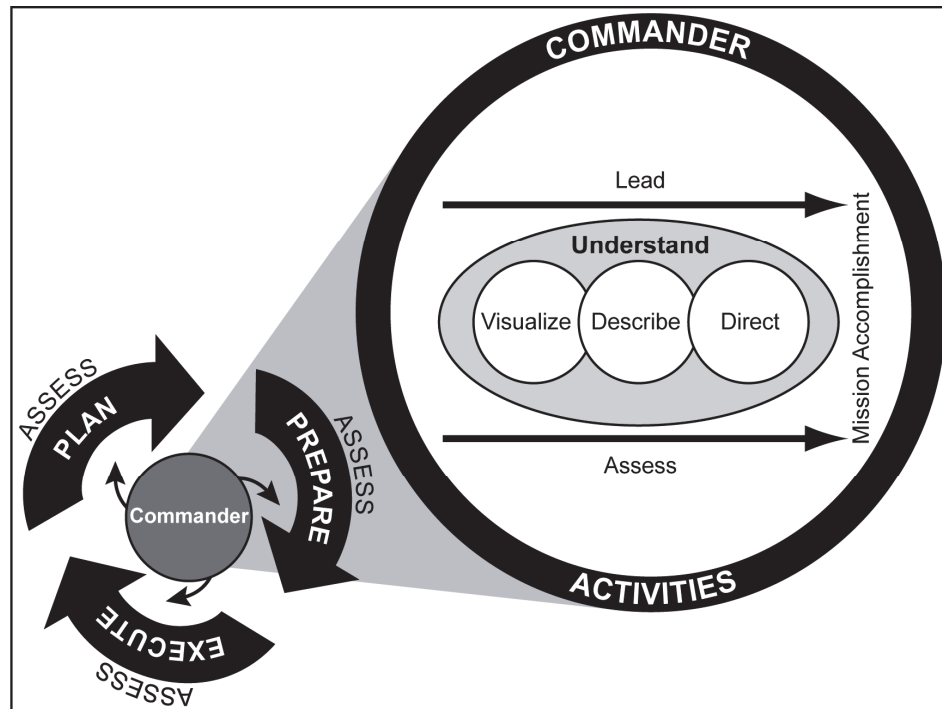
- Are there policies, directives, or regulations that deal specifically with protection issues?
- What ROE or RUF, operation orders, or procedures are in effect for Soldiers tasked with securing facilities, equipment, and other items of value to U.S. forces?
- If the U.S. plans to use private security contractors, under what ROE or RUF will they operate? Which organization will be responsible for prescribing and monitoring the contractors' ROE or RUF? How will they synchronize ROE or RUF with U.S. military ROE or RUF?

## **THE OPERATIONS PROCESS**

2-28. While differing significantly in design and application, all operations follow the operations process. The operations process consists of the major mission command activities performed during operations: planning, preparing, executing, and continuously assessing the operation. The commander drives the operations process. (See figure 2-2.) These activities may be sequential or simultaneous. They are usually not discrete; they overlap and recur as circumstances demand. Commanders use the operations process to help them control operations, provide a command presence, and decide when and where to make decisions. Commanders drive the operations process through mission command—understand, visualize, describe, direct, lead, and assess. (See ADP 3-0.)

2-29. Throughout the operations process, commanders synchronize forces with warfighting functions to accomplish missions. This synchronization is essential to achieving synergistic effects. However, synchronization is not an end in itself. It is useful only as it contributes to the greater effectiveness of the

force. Unnecessary synchronization or synchronization for limited gains degrades tempo, impedes initiative, and allows the enemy to act within the friendly force decision cycle.



**Figure 2-2. Mission command and the operations process**

2-30. Judge advocates are active in every aspect of the operations process. They remain attuned to the course of the operation and provide critical information. More than ever, decisive action requires informed legal support. As Army forces confront increasingly challenging and dynamic environments, legal issues arise in circumstances unforeseen in previous military engagements. From lethal and nonlethal targeting to the proper use of specific funds in coalition and interagency operations, legal issues abound in the current and emerging environments. As a result, commanders recognize the value of personnel trained to spot legal issues related to offensive, defensive, stability, and defense support of civil authorities operations.

2-31. Judge advocates have become fully integrated into the operations process to provide real time support to the planning, execution, and assessment activities. Chapters 4 and 5 discuss in detail the roles and responsibilities of JAGC personnel in the operations process and the core disciplines impacting decisive action.

## LINES OF OPERATIONS AND LINES OF EFFORT

2-32. Major combat operations are normally designed using lines of operations that define the directional orientation of a force in time and space in relation to the enemy and link the force with its base of operations and objectives. Stability and defense support of civil authorities operations are designed along lines of effort that link multiple tasks and missions using the logic of purpose to focus efforts toward establishing operational and strategic conditions. They are vital in helping to achieve unity of effort in operations that involve civilian organizations and multinational forces. (See ADP 3-0.)

2-33. In an operational design, lines of operations and lines of effort bridge decisive action to link tactical and operational objectives to the end state. A line of operation defines the directional orientation of a force in time and space with relation to the enemy toward a geographic or force-oriented objective. A line of effort links multiple tasks across the spectrum of conflict using the logic of purpose to focus on the end state. In decisive action, the types of operations may occur simultaneously or sequentially; commanders synchronize and sequence tasks across multiple lines of operations and lines of effort. Commanders

establish the military end state and supporting conditions for each operation, developing lines of operations that help shape conditions that produce the end state. Subordinate commanders adjust the level of effort and missions along each line of operations. Commanders formulate lines of operation and continually refine them through assessment. Commanders may describe an operation along lines of operations that are physical, logical, or a combination of both.

2-34. Lines of effort describe how decisive points are linked to operational and tactical objectives; they connect the force with its base of operations and its objectives. Lines of effort define the operational design when positional references to an adversary have little relevance. Rather than focus on physical objectives, operations designed using lines of effort center on creating the conditions that define the end state. Ideally, lines of effort combine the complementary, long-term effects of stability tasks with the cyclic, short-term events typical of combat operations. Lines of effort also help commanders visualize how military means can support nonmilitary instruments of national power. Judge advocates should refer to ADP 3-0 to understand these operational concepts and learn the commander's language to participate in planning operations and to provide legal support to decisive action along the lines of effort.

2-35. Judge advocates must understand the framework of decisive action and its potential merits for ensuring that operations are synchronized across lines of operations and lines of effort. Where the natural inclination for execution might be to phase or execute operations sequentially, the lines of effort model helps ensure that operations are executed simultaneously and in synchronization. In decisive action, planners (including judge advocates) identify and seek to avoid potential conflicts. This deconfliction ensures momentum gained along each line of effort is not compromised. Visualization of operations using this model further ensures that during the planning process, judge advocates are able to anticipate legal issues and take a proactive role in their resolution.

## **WORKING GROUPS**

2-36. A *working group* is a grouping of predetermined staff representatives who meet to provide analysis, coordinate, and provide recommendations for a particular purpose or function (ATTP 5-0.1). Working groups allow for synchronization of efforts across multiple staff sections and command post cells on specified issues. The number of working groups and their duration depend on the situation within a given area of operations. While it is common to find working groups created around the warfighting functions, they are also used to focus on specific lines of operations, and shorter term issues such as elections. There is no limit to the subject areas for which a commander may create a working group.

2-37. Judge advocate working group members provide valuable expertise and knowledge on the legal issues related to the purpose of the working group. Judge advocates must identify the working groups created in their unit and ensure they actively participate in those groups for which they are members.

## **RUNNING ESTIMATES**

2-38. A *running estimate* is the continuous assessment of the current situation used to determine if the current operation is proceeding according to the commander's intent and if planned future operations are supportable (ADP 5-0). Commanders and each staff section are responsible for building and maintaining their own running estimate. Staff sections focus their running estimate on how their specific area of expertise is postured to support future operations. The running estimate itself addresses all aspects of operations and contains both facts and assumptions based on the staff's experience within their area of expertise. The base running estimate serves as the staff section's initial estimate of the current readiness of equipment and personnel and the impact of any factors on the section's ability to accomplish the mission.

2-39. The running estimate is continually updated whether in garrison or deployed and throughout the operations process. Receipt of mission, new information, events, and activities affecting the operational environment all trigger the need to update a running estimate.

2-40. Judge advocates at all echelons utilize running estimates to assess their section's ability to support the command in each of the core legal disciplines; identify personnel and equipment requirements; anticipate and resolve potential legal issues in current and future operations; and prepare recommendations to the commander. The running estimate is a valuable tool for judge advocates to record their assessments, considerations, and assumptions related to the delivery of legal support to the command in support of operations.

## Chapter 3

# Requirements in the Modular Force

This chapter provides an overview of the modular force concept. It describes the organizational structure of the Army and identifies where Judge Advocate General's Corps Soldiers will be assigned throughout this modular force. The chapter further describes materiel requirements necessary to provide legal support at various echelons, along with some of the information resources that judge advocates should have access to for mission accomplishment.

### TRANSFORMATION

3-1. The global security environment changed dramatically after the terrorist attacks of 11 September 2001. Since those attacks, the U.S. has faced more unconventional threats ranging from rogue nations aligned with terrorist groups to insurgents and guerillas. Recognizing that U.S. forces can no longer exclusively organize, train, and equip for conventional war, the Army and the Department of Defense significantly changed the Army's force structure, doctrine, training, and equipment. The Army has undergone its most dramatic change since World War II-era transformation.

3-2. The overall force structure redesign changes the nature of military competition and cooperation through new combinations of concepts, capabilities, people, and organizations. These new combinations exploit the nation's advantages and protect against U.S. vulnerabilities to sustain the U.S. strategic position, which helps underpin peace and stability in the world. Transformation is a continuing process that requires the active participation of all major components in the organization. The overall objective of transformation is to sustain the United States' competitive advantage in war.

3-3. One of the major objectives of transformation is to shift the "center of gravity" for Army operations from division to brigade level. Brigade combat teams are the Army's basic tactical maneuver units and the smallest combined arms units that can be committed independently. Their core mission is to close with the enemy using fires and maneuver to destroy or capture enemy forces, or to repel their attacks by fire, close combat, and counterattack. Under the Army's new operational paradigm, an operational commander can select the number and type of brigades needed to accomplish a particular mission, and build a force package consisting of only those units. These brigade-based force packages have organic logistic support, thereby reducing the need to rely on outside logistic assets.

3-4. In another major change to past practices, a deployed brigade does not always operate under the division that normally acts as the brigade's higher headquarters in garrison. Under the new construct, brigades deploy and operate under a variety of different higher headquarters arrangements depending upon the mission. The brigade's headquarters element may be a division headquarters, a corps headquarters, or even a joint task force (JTF) headquarters. This new approach allows Army forces greater flexibility to task-organize more efficiently and effectively for meeting uncertain and irregular threats.

### BRIGADE COMBAT TEAMS

3-5. Under the modular force design, the brigade combat team (BCT) is the building block of land combat power. The BCT is designed to operate as an autonomous unit independent of the standard mission command relationship between a division and an organic brigade. There are three types of BCTs: infantry BCTs, Stryker BCTs, and heavy BCTs. In addition, there are five types of support brigades: battlefield surveillance brigades, fires brigades, combat aviation brigades, maneuver enhancement brigades, and sustainment brigades.

3-6. Consistent with the modular concept, a BCT may operate as a self-contained task force or it may fall in on a higher headquarters element, perhaps even one from a different home station. This “plug and play” concept and the Army’s brigade-centric approach impact the Judge Advocate General’s Corps (JAGC). Although the brigade judge advocate serves as the legal advisor to the BCT commander, the brigade judge advocate is always under the technical supervision of a superior staff judge advocate (SJA), in accordance with Article 6 of the Uniform Code of Military Justice. SJAs and brigade judge advocates work together to foster productive technical-channel relationships and communications, providing effective and accurate legal advice and support across all echelons of the modular force.

3-7. Brigade legal section personnel are prepared to operate under the technical supervision of a higher headquarters with which they have no habitual relationship. In those instances, close coordination, uniformity, and consistency of practice become even more essential. Given the Army’s increased use of modular BCTs, the delivery of legal support shifts in responsibility from corps and division SJA offices to the brigade legal sections. The Army force management system provides for organic legal positions in BCTs. In addition to the BCT-level legal positions, paralegal Soldiers are also directly assigned to subordinate battalions. For additional information on BCTs and support brigades, refer to FM 3-90.6.

## **THE DIVISION**

3-8. The transformed modular division headquarters operates, in order of priority, as a tactical headquarters to BCTs; as the Army Service component headquarters (as an ARFOR) for a joint force; as a joint force land component headquarters; and then as a JTF. The division is the primary tactical warfighting headquarters for mission command of land force BCTs. In this role, it employs land forces as part of a joint, interagency, and multinational force conducting decisive action. The division executes simultaneous offensive, defensive, and stability or defense support of civil authorities operations to establish specific conditions. It assigns tactical tasks and missions to BCTs while organizing decisive, shaping, and sustaining operations.

3-9. The division may serve as an ARFOR headquarters in small-scale contingencies without additional Army augmentation. With staff augmentation, the division may also serve as a joint forces land component or JTF headquarters. When serving as a JTF the division will organize and operate in accordance with joint doctrine.

3-10. The division headquarters is organized with a division headquarters and headquarters battalion, two command posts (division main and division tactical), and a mobile command group. The division will be tailored or task-organized with a mix of BCTs and support brigades to conduct operations. To conduct a major combat operation, the division requires the appropriate mix of the three types of BCTs (infantry, Stryker, and heavy BCTs) and at least one of each of the five types of support brigades—combat aviation, battlefield surveillance, maneuver enhancement, and fires. Typically, the sustainment brigade supporting the division has a command relationship with the theater sustainment command (often through the expeditionary sustainment command if deployed), and a support relationship with the division.

3-11. At the division-level, the Offices of the Staff Judge Advocate (OSJAs) support and have oversight of subordinate brigade legal sections with which they may or may not have a traditional mission command relationship. As the higher-echelon component, the division OSJA ensures the employment of generally uniform standards of practice across all core competencies. The division OSJA must maintain awareness of brigade personnel issues so to provide support as needed. In deployed settings, the diverse areas of operation will impact mission planning and conduct of operations. Division OSJAs help brigade legal sections bridge capability gaps based on those differing challenges. The Army force management system identifies approved organic legal positions in the division SJA office.

## **THE CORPS**

3-12. The transformed modular Army corps headquarters is designed to operate, in order of priority, to exercise mission command of tactical Army forces, to leverage joint capabilities, and to exercise mission command of joint forces for small-scale contingencies. The corps headquarters has the capability to provide the nucleus of a joint headquarters. However, the ability of the corps to transition to a JTF headquarters or joint force land component command headquarters depends heavily on Army and other Service

augmentation. The transition of a modular corps headquarters to a joint headquarters relies on a timely filling of joint positions, receipt of joint enabling capabilities, and comprehensive preactivation training as a joint headquarters.

3-13. The modular corps headquarters consists of two mission command nodes plus a mobile command group. The main command post contains the command group, the commander's personal and special staff, and a mix of six functional cells (mission command, movement and maneuver, intelligence, fires, sustainment, and protection) and three integrating cells (current operations, future operations, and plans) under the general supervision of the chief of staff. The tactical command post is an integrating node with representatives of all warfighting functions and others as required. When directed, the corps headquarters can create a mobile command group built around the corps commander. Additionally, the main command post can field an ad hoc early entry command post to precede the rest of the corps headquarters into an area of operations.

3-14. The modular corps headquarters can control a mix of division headquarters, BCTs, and support and functional brigades. Based on its mission, the corps headquarters receives the attachment, operational control, or tactical control of tailored support from national, strategic, or theater army assets.

3-15. Corps OSJAs provide legal support to operational-level planning of operations. They further support the efforts of division OSJAs and brigade legal sections to advise commanders. Corps OSJAs also provide analysis and advice regarding lower-echelon legal actions that require broader oversight, due to law, regulation, or policy. When deployed, irregular operational efforts may require direct contact between brigade and corps legal personnel. Corps OSJAs maintain the capability to analyze specific brigade mission requirements. As with a better-resourced organization, reporting requirements flow upward, but the general burden of support flows from the corps OSJA to the division OSJA to the brigade legal section. For additional information on corps, refer to FM 3-92. The Army force management system identifies approved organic legal positions in the corps SJA office.

## **THEATER SUSTAINMENT COMMAND**

3-16. The theater sustainment command provides sustainment planning, guidance, and support to forces in a theater of operation and is assigned to a theater army headquarters. A theater sustainment command is not a fixed organization and subordinate units are assigned, attached, or under operational control based on the mission requirements. If required, the theater sustainment command will employ expeditionary sustainment commands to provide mission command for attached units in an area of operation as defined by the theater sustainment command. The expeditionary sustainment command plans and executes sustainment, distribution, theater opening, and reception, staging, and onward movement for Army forces within the spectrum of conflict. For additional information on theater sustainment commands, refer to FM 4-94.

3-17. The OSJAs for theater and expeditionary sustainment commands provide legal support across the six core legal disciplines in support of the command both in garrison and while deployed. The Army force management system identifies approved table of organization and equipment legal positions in the SJA offices for theater and expeditionary sustainment commands.

## **THEATER ARMY**

3-18. Theater army is the doctrinal name for the Army Service component command (ASCC) of a geographic combatant command and is the primary vehicle for Army support to Army, joint, interagency, intergovernmental, and multinational forces operating in the area of responsibility. If the combatant commander acts as the joint force commander, the theater army may provide the land component commander and headquarters to exercise operational control over land forces deployed to a joint operations area. Additionally, when required, the ASCC is also capable of providing a joint task force capable headquarters to serve as the joint headquarters for contingencies with other Service augmentation. In almost all cases, the theater army's theater sustainment command executes the ASCC sustainment functions. The theater army is the doctrinal name for the ASCC of a geographic combatant command and is the primary vehicle for Army support to Army, joint, interagency, and multinational forces operating in the area of responsibility. The ASCC integrates Army forces into execution of theater security cooperation plans as well.

3-19. The theater army SJA serves as the principal legal advisor to the commander and staff. The SJA office advises on all matters pertaining to law, policy, regulation, and good order and discipline in the geographic combatant command's area of responsibility. The SJA also advises the contingency command post when deployed. It supports the commander and staff during planning and conduct of operations in the area of responsibility by providing legal advice with respect to all aspects of operations. ASCC SJAs provide—

- Operational-level policy advice and planning.
- Area of responsibility specific knowledge and expertise.
- Subject matter experts.
- Access to and contacts with Department of the Army, geographic combatant command, Department of Defense, and Joint Chiefs of Staff legal elements and specific subject matter experts.
- Advice on all aspects of the organization, powers, functions, and employment of the ASCC.

The ASCC SJA may also serve as joint task force headquarters SJAs, at the direction of their respective geographic combatant command. The Army force management system identifies approved table of organization and equipment legal positions in the ASCC SJA office.

## **THE JUDGE ADVOCATE GENERAL'S CORPS MATERIEL REQUIREMENTS**

3-20. The abilities to communicate and receive information represent the judge advocates primary materiel requirements to deliver timely legal support in garrison and in a deployed environment. Legal personnel must be well equipped in order to most effectively perform their mission in support of the command. Communication, legal automation, and mobility are the most critical categories of equipment. Additionally, the area of operations may necessitate other requirements to most effectively support the command. Those requirements can include the need for legal personnel to have proper security clearances, security containers, secure safes as well as the ability to provide an area for confidential communications among legal personnel and clients, investigating officers, commanders, and others as the situation requires.

### **COMMUNICATIONS**

3-21. Operations often occur in fluid, chaotic, and dangerous environments in which mobility is constrained. Legal advice is time-sensitive and often critical. JAGC Soldiers require access to communications that link them with the commander, subordinate commanders, the staff, and SJAs at higher echelons as well as to contact legal assets located in the continental United States. Dedicated Nonsecure Internet Protocol Router Network (NIPRNET) and SECRET Internet Protocol Router Network (SIPRNET) access is a priority requirement for judge advocates. JAGC Soldiers utilize communications available within their commands, including the Army Battle Command System, combat net radios, common-user networks, the Army Data Distribution System equipment, and broadcast system equipment. In addition, JAGC Soldiers must have a dedicated digital sender on both NIPRNET and SIPRNET to transmit critical, time-sensitive documents. These documents can be simultaneously scanned and e-mailed to any location.

### **AUTOMATION**

3-22. The JAGC requires a dedicated system of automation to provide responsive legal services at all echelons of command. That system is the electronic Judge Advocate Warfighting System (e-JAWS). This system integrates legal information and services into a network that projects automated legal services down to battalion level and permits sharing of legal work product. E-JAWS' programs process, transmit, receive, and display essential information. E-JAWS provides standardized software throughout the JAGC and includes modules and databases for all core legal disciplines. The system operates through the knowledge management and information service called Judge Advocate General's Corps Information Network (JAGCNet). Legal references compiled by e-JAWS are available in removable media and via databases on the JAGCNet. JAGC Soldiers use the e-JAWS and JAGCNet to provide accurate and responsive operational legal services. JAGC Soldiers also require access to classified databases and information through the SIPRNET. Despite advances in information technology, legal personnel are always prepared to provide operational support in circumstances without that technology. JAGC Soldiers should acquire legal resources before deploying rather than expect to be able to download them via the Internet once deployed.



3-23. The JAGC operates The Judge Advocate General's Legal Center and School to train and educate military, civilian, and international legal personnel in legal and leadership skills. It developed the Judge Advocate General's University (JAGU) with state-of-the-art technology to deliver education and training. The training from JAGU meets the emerging challenges in all environments. The JAGU uses real-time information and video presentations. It provides legal personnel with quick and easy Internet access worldwide. Legal personnel access informative Web sites to incorporate warrior lessons learned and other important information into daily legal practice. The JAGU offers legal personnel a dynamic tool for professional development and mission accomplishment in today's and future operational environments.

## **MOBILITY**

3-24. Legal personnel depend on the units to which they are assigned or attached for transportation. Sufficient vehicles are required for legal personnel, such as the SJA or command judge advocate and staff, military judges, and defense counsel. The number and type of vehicles will depend on the commander's requirements for legal services. Normally, a division or corps SJA office requires four high-mobility multipurpose wheeled vehicles (HMMWVs), one 5-ton cargo truck, and four cargo trailers. Brigade judge advocate or command judge advocate sections typically require one HMMWV and one cargo trailer. Additionally, each military judge in theater of operations and each trial defense section requires one HMMWV with trailer. Mobility serves three distinct functions:

- Control of legal assets.
- Effective delivery of operational law and personnel service support.
- Service of geographic areas.

## **Control**

3-25. The SJA supervises and exercises administrative control over SJA section personnel. To administer legal services effectively, the SJA knows what, where, and when legal services are required and directs the appropriate employment of legal personnel. The SJA provides technical advice and guidance to judge advocates that fall under the SJA's statutory technical supervision. Moreover, as the primary legal advisor to the commander and staff, the SJA has the mobility to be wherever and whenever required.

## **Delivery**

3-26. The SJA delivers legal services throughout the area of operations. JAGC Soldiers provide legal services to lower echelons of command. These Soldiers require mobility for several reasons:

- Reviewing allegations of war crimes and violations of the Uniform Code of Military Justice.
- Receiving, investigating, and paying foreign claims.
- Conducting rule of law activities.
- Providing legal assistance.
- Advising commanders on time-sensitive, mission-essential legal problems, particularly those encountered during stability operations.
- Providing trial defense counseling to Soldier-client pending UCMJ or adverse administrative action.

## **Service**

3-27. Military judges provide judicial legal services on an area basis. Courts-martial will be conducted in the accused's unit's area of operations as far forward as the commander deems appropriate. Trying courts-martial as far forward as possible will minimize disruption of the unit, provide better availability of witnesses, and speed the administration of military justice. Military judges must have the mobility to preside over courts-martial and perform magistrate duties where and when needed. Defense counsel provide defense legal services to the units for which they are assigned responsibility or on an area basis and need mobility assets to accomplish this mission. Defense counsel need to maintain the mobility to interview and consult with widely scattered clients and witnesses and to represent their clients before courts-martial and adverse administrative proceedings.

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## Chapter 4

# Roles, Responsibilities, and Working Relationships

This chapter examines the roles, responsibilities, and working relationships of Judge Advocate General's Corps organizations and Judge Advocate General's Corps personnel assigned to the operational Army. It outlines the primary doctrinal missions of the legal sections and legal offices at various levels of command and information regarding the roles and responsibilities of Judge Advocate General's Corps personnel.

## WORKING RELATIONSHIPS AND PROFESSIONAL RESPONSIBILITY CONSIDERATIONS

4-1. Chapter 3 of this field manual outlines changes in the Army's operational force structure. While operational mission command may have changed, the Judge Advocate General's Corps' (JAGC's) mission remains the same: to develop, employ, and retain one team of proactive professionals, forged by the Warrior Ethos, who deliver principled counsel and mission-focused legal services to the Army and the Nation. To accomplish this mission, judge advocates, legal administrators, and paralegal Soldiers work together proactively and professionally. To this end, JAGC personnel at every level of command are expected to forge and maintain strong working relationships with each other.

4-2. Working relationships are the key to success. When faced with vagueness or ambiguity, JAGC Soldiers use their intelligence, initiative, and ingenuity to craft courses of action that will help accomplish the mission legally, morally, and ethically.

4-3. Army regulations requires JAGC personnel to comply with military and civilian codes of professional responsibility and ethics that govern the practice of law. While all JAGC personnel are Soldiers first, judge advocates are prohibited from providing legal support in any way that violates an applicable rule of legal ethics. Judge advocates may not, for example, engage in conflicts of interest. These conflicts often arise when a judge advocate represents the command, but the command asks the judge advocate to give legal advice to Soldiers. In cases of ethical conflict, an additional judge advocate is involved. This and other rules of professional responsibility govern both judge advocate attorneys and the legal administrators and paralegal Soldiers who assist them. Judge advocates are subject to professional discipline from their bar licensing organizations for violating any applicable rule, even in an area of operations. Judge advocates identify and explain to their commanders any issues of legal ethics that may affect operations. JAGC personnel should also inform and consult their staff judge advocates (SJAs) regarding any matters of professional legal ethics.

## BRIGADE LEGAL SECTION

4-4. In keeping with the Army's brigade-centric approach to operations, the JAGC enhances brigade-level legal support. In the past, judge advocates and paralegals were assigned to the division Office of the Staff Judge Advocate (OSJA) and task-organized into brigade operational law teams for specific operations. Under the new design, the brigade operational law team has been replaced by the more robust brigade legal section. This organization is directly assigned to the brigade headquarters and not to the division OSJA.

4-5. Whether in garrison or deployed, the brigade legal section provides legal services across the core legal disciplines. The section's priorities are based on the brigade commander's guidance and direction, the SJA's legal priorities across the area of operations, and the brigade judge advocate's professional judgment. The breadth of service that a brigade legal section provides will depend on several factors. These factors include the brigade's tempo, the brigade's deployment status, the experience level of brigade legal section personnel, the availability of additional judge advocates or paralegal support during "surge" periods, and

the existence of actual conflicts of interest. As a field grade officer and an experienced judge advocate, the brigade judge advocate is expected to make sound, well-reasoned decisions regarding the level of service that the brigade legal section can provide. When faced with situations where the brigade legal section cannot provide the proper breadth of service, the brigade judge advocate should use the brigade chain of command and JAGC technical channels to address shortfalls.

4-6. The brigade legal section performs the following tasks:

- Provide the brigade commander, battalion and company commanders, and brigade and battalion staffs with legal advice and support across the core legal disciplines.
- Provide the brigade commander, battalion and company commanders, and brigade and battalion staffs with legal advice and support in decisive action.
- Provide the brigade commander, battalion and company commanders, and brigade and battalion staffs with legal advice and support in military justice, administrative separations, command policies, and other issues related to the good order and discipline of the brigade.
- Oversee the administration of military justice for the brigade, to include conducting military justice proceedings up to and including general courts-martial, in coordination with the OSJA for the general court-martial convening authority (GCMCA).
- Provide legal assistance services (including Soldier readiness processing) to the brigade consistent with all applicable laws, regulations, rules of professional responsibility, and requirements of the brigade's mission.
- Administer a preventive law program designed to educate commanders, staff, Soldiers, and their families on legal issues that they may confront on a regular basis.
- Ensure that all brigade legal personnel are trained and ready to deploy in support of the brigade's mission.
- Coordinate higher-level and subject matter expert legal support for legal issues outside the brigade legal section's ability to resolve.
- Serve as ethics counselors if appointed by appropriate superior authority.

### **BRIGADE LEGAL SECTION PERSONNEL**

4-7. A brigade legal section includes two judge advocates: a brigade judge advocate and a trial counsel. The brigade judge advocate, (a major,) serves as the brigade commander's legal advisor and officer in charge of the brigade legal section. A trial counsel is a captain who primarily administers all military justice matters for the brigade. Additionally, the trial counsel will provide operational law advice and assist the brigade judge advocate with legal issues across all operational law disciplines. The brigade legal section also includes a brigade senior paralegal noncommissioned officer (NCO). Brigade combat teams (BCTs) are authorized a sergeant first class to fill the position of a brigade senior paralegal NCO. Support brigades are authorized a staff sergeant to fill the same position. Finally, paralegal Soldiers, E-1 through E-5, are assigned to each subordinate battalion of a BCT or support brigade. All JAGC Soldiers in a brigade work under the direction and supervision of the brigade judge advocate.

4-8. During deployments, a brigade legal section frequently requires augmentation to meet its mission requirements. Requests for augmentation should be made as soon as the requirement is identified, usually during the predeployment planning process. If augmented, the brigade legal section may include an additional judge advocate, usually a captain. This captain's duties include operational law, administrative law, and legal assistance support to the brigade. When augmented by a third judge advocate, the brigade legal section can avoid ethical conflicts when providing client services and administrative law support. For example, during client services, rules of professional responsibility prevent the same judge advocate from advising both the commander and a Soldier regarding the same adverse action. Additionally, a judge advocate is needed to serve as an advisor to an AR 15-6 investigator. When deployed, duties of the brigade legal section may include foreign claims and detention operations. Ultimately, the brigade judge advocate determines the duties and responsibilities of the third judge advocate in light of mission requirements.

4-9. The brigade judge advocate is the primary legal advisor to the brigade commander. As a member of the brigade commander's personal and special staff, the brigade judge advocate requires a direct line of communication to the brigade commander. The brigade judge advocate, the trial counsel, and the brigade

senior paralegal NCO are assigned to the brigade. The brigade headquarters is the primary place of duty for the brigade judge advocate and the senior paralegal NCO as well as for a judge advocate augmenting the brigade legal section. The trial counsel will work at the OSJA military justice section while in garrison to foster effective training and ensure consistency in the quality of legal services delivered. The trial counsel will deploy with the brigade headquarters for training exercises and missions. The trial counsel will maintain a close working relationship with the brigade for both effective military justice support and deployments. Fostering this relationship may include participation in the brigade physical training program, brigade officer development program, and other events.

4-10. Though the SJA normally serves as the brigade judge advocate's rater, the brigade commander or designated representative (ordinarily the deputy commander or executive officer) typically determines the brigade judge advocate's routine duties in support of the brigade. The brigade judge advocate supervises the trial counsel during training exercises and missions. The OSJA chief of military justice in garrison directly supervises the trial counsel. While not directly supervising all brigade legal personnel, the SJA of the higher echelon does have responsibility for legal oversight, training, and technical guidance. (See paragraphs 4-18 through 4-32.)

## **DUTIES AND RESPONSIBILITIES OF BRIGADE LEGAL SECTION PERSONNEL**

4-11. Paragraphs 4-12 through 4-17 outline the primary duties and responsibilities of personnel assigned to the brigade legal section. While not all-inclusive, these duty descriptions provide a good overview of each Soldier's role in providing legal support to the brigade. The actual day-to-day duties and priorities of brigade legal section personnel vary based on the brigade commander's priorities, the SJA's legal priorities within the GCMCA's area of operations, the brigade's mission, and the unit's deployment status.

### **Brigade Judge Advocate**

4-12. The brigade judge advocate advises the commander and staff on operational law, military justice, administrative law, fiscal law, and other areas of the law as required. This judge advocate ensures the delivery of legal services to the brigade across the core legal disciplines. The brigade judge advocate participates in operations planning and targeting processes. This participation includes reviewing operation plans and orders, training concepts, and other key actions for legal sufficiency. The brigade judge advocate deploys as a member of the brigade staff and serves as the officer in charge of the brigade legal section. As a member of the brigade staff, the brigade judge advocate normally attends the meetings that the brigade staff primaries attend. This officer plans, coordinates, and oversees client services, Soldier readiness programs, and preventive law programs for the brigade. The brigade judge advocate supervises, trains, and mentors the trial counsel, judge advocate augmentee, and the brigade senior paralegal NCO, and bears supervisory responsibility for the overall professional development of brigade legal section personnel.

### **Brigade Trial Counsel**

4-13. The brigade trial counsel advises commanders and staff in all areas of military justice in garrison and during deployments. The trial counsel prosecutes courts-martial arising within the brigade. The trial counsel coordinates with law enforcement agencies on pending cases and investigations within the brigade. The trial counsel represents the government at Article 32(b) investigations and administrative boards. The trial counsel reviews adverse administrative actions, Article 15 punishments, and other military justice matters arising within the brigade. Additionally, the trial counsel assists the brigade judge advocate on operational law issues including the Department of Defense Law of War Program, detainee operations, status-of-forces and other international agreements, general orders, and predeployment legal preparation. The trial counsel serves as a standing member of operations planning groups, targeting boards, and the fires section. The trial counsel participates in planning for operations and conducts legal reviews of operation plans, contingency plans, and exercise plans. The trial counsel deploys as necessary. The trial counsel also serves as the acting brigade judge advocate when the brigade judge advocate is absent.

### **Brigade Senior Paralegal NCO**

4-14. The brigade senior paralegal NCO is the senior enlisted advisor and assistant to the brigade judge advocate, and serves as the noncommissioned officer in charge of the brigade legal section. The senior

paralegal NCO supervises, trains, and mentors subordinate paralegal Soldiers and paralegal NCOs assigned to battalions. The senior paralegal NCO serves as a member of the brigade's staff. This NCO should have successfully completed the Battle Staff NCO course and received an additional skill identifier. This NCO coordinates and conducts required training on legal issues, including law of war and rules of engagement. The senior paralegal NCO coordinates with the brigade judge advocate, the OSJA command or chief paralegal NCO, and the career developments manager at Army Human Resources Command, to requisition vacant paralegal Soldiers' positions at the battalion level. Additionally, the brigade senior paralegal NCO regularly advises Human Resources Command of personnel actions that can potentially impact the brigade's legal strength.

### **Battalion Paralegal Soldiers**

4-15. Paralegal Soldiers, E-1 through E-5, are assigned to the S-1 section of each subordinate battalion. Their assignment to the battalion S-1 section is designed to provide legal support to battalion commanders and Soldiers. These paralegal Soldiers act under the direction and supervision of the brigade judge advocate and brigade senior paralegal NCO, and their duties are restricted to those of a legal nature.

4-16. Brigade judge advocates and brigade senior paralegal NCOs retain the flexibility to coordinate the consolidation of legal assets at the brigade headquarters. The decision to consolidate is based on a variety of factors. While in garrison, geographic location of subordinate battalions, operational tempo, ease of movement, and the nature of the legal mission often lends itself to the consolidation of legal assets at the brigade headquarters. Consolidation allows the brigade judge advocate and senior paralegal NCO to train, supervise, and develop paralegal Soldiers to the required level of expertise prior to deployment. During deployment, these and other factors may also lead to the decision to consolidate legal assets. Consolidation of legal assets may be necessitated due to the nature of legal support requirements required by the operation. The BJA and senior paralegal NCO must weigh the relevant factors and determine whether decentralization or consolidation provides the optimal use of legal assets to support the command's mission. Operational adaptability requires continuous assessment of the situation and might necessitate the need to decentralize legal assets and consolidate them in whole or in part throughout the operation. Consolidation of legal assets is coordinated with the brigade commander.

### **Judge Advocate Augmentation**

4-17. If additional judge advocate augmentation is necessary and provided, that judge advocate provides legal advice to commanders and staff on operational law, administrative law, fiscal law, and all other areas of the law as required. The judge advocate provides support to plans cells. The additional judge advocate provides legal assistance, Soldier readiness, and preventive law support to the brigade. The judge advocate performs legal advocacy tasks on behalf of the Soldiers of the brigade, especially where conflicts of interest exist. The brigade judge advocate determines the scope of the judge advocate augmentee's duties and responsibilities based upon mission requirements.

## **THE OFFICE OF THE STAFF JUDGE ADVOCATE**

4-18. The OSJA provides legal support to the commander, staff, Soldiers, retirees, families, and other eligible individuals supported by a given command. Divisions, corps, and Army Service component commands (ASCCs) are supported by organic OSJAs.

### **THE OFFICE OF THE STAFF JUDGE ADVOCATE TASKS**

4-19. The OSJA performs the following tasks:

- Provide the commander and staff with legal support and advice in decisive action-oriented operations.
- Advise the commander and staff on military justice, administrative separations, command polices, and other issues related to the good order and discipline of the command.
- Oversee the administration of military justice for the GCMCA and provide supervision, training, and oversight of the brigade trial counsel in the administration of military justice matters while in garrison.

- Provide the commander and staff with legal support and advice in all legal disciplines.
- Administer claims and legal assistance programs consistent with all applicable laws, regulations, and rules of professional responsibility.
- Administer a preventive law program designed to educate commanders, staff, Soldiers, retirees, and their families on legal issues that they may confront regularly.
- Ensure that personnel directly assigned to the OSJA are trained and ready to deploy in support of the unit's mission.
- Provide legal oversight, training, and guidance to brigade legal sections under the SJA oversight authority.
- Establish policies and procedures that ensure consistent legal support across the subordinate units, particularly in a deployed environment.

## **DUTIES AND RESPONSIBILITIES OF THE OFFICE OF THE STAFF JUDGE ADVOCATE**

### **PERSONNEL**

4-20. The SJA leads the OSJA at the level of division headquarters and above and at installations that support operational units. The SJA manages and leads with the help of key advisors: the deputy SJA, the legal administrator, the command or chief paralegal NCO, and the civilian advisor. Together, they are known as the foundation of five. With the advice and assistance of the other members of the foundation of five, the SJA ensures that the OSJA is led, trained, equipped, and supported in a manner to accomplish the mission. The foundation of five is a flexible and dynamic concept. SJAs should tailor the concept individually depending on their mission and office structure. Each division within the OSJA has a division chief and a noncommissioned officer in charge who receives direction, guidance, and support from senior leadership. They in turn provide direction, guidance, and support that are more specific to those who work in their division—subordinate judge advocates, civilian attorneys, and paralegal NCOs and Soldiers. Paragraphs 4-21 through 4-32 discuss each leader's responsibilities.

### **The Staff Judge Advocate**

4-21. The SJA is the field representative of The Judge Advocate General (TJAG). As TJAG's assigned representative, the SJA has responsibility to deliver legal services within a command. The SJA is the officer in charge of the OSJA. This officer is responsible for planning and resourcing legal support as well as conducting training, assignments, and the professional development of JAGC personnel assigned to the command and its subordinate units. In accordance with Article 6 of the Uniform Code of Military Justice (UCMJ), the SJA is authorized to communicate directly with TJAG and other supervisory judge advocates of superior or subordinate commands as necessary.

4-22. The SJA serves as the primary legal advisor to the commander exercising GCMCA as prescribed by the Uniform Code of Military Justice (UCMJ), the *Manual for Courts-Martial*, and applicable regulations. The SJA is a member of the commander's personal and special staff. In accordance with Article 6 of the UCMJ, at all times the commander and the SJA shall communicate directly on matters relating to the administration of military justice, including, but not limited to, all legal matters affecting the morale, good order, and discipline of the command. The SJA provides legal advice and support to the staff and coordinates actions with other staff sections to ensure the timely and accurate delivery of legal services throughout the command.

4-23. The SJA performs the following duties:

- Provide military justice advice and perform military justice roles, functions, and duties prescribed in the UCMJ.
- Provide legal advice regarding administrative boards, investigations, or other military tribunals.
- Provide oversight and training of legal personnel in the command and its subordinate units, including professional responsibility training to those judge advocates under the SJA's direct and technical supervision.
- Implement TJAG policies addressing rating schemes for legal personnel.
- Ensure that OSJA personnel are ready to deploy.

- Provide legal advice and support in the areas of administrative and civil law.
- Provide international and operational law advice, including training and support to the Department of Defense Law of War Program.
- Provide legal advice and support on contract and fiscal law, health care law, and environmental law matters.
- Operate the command's legal assistance, claims, procurement fraud, Federal magistrate court, victim-witness assistance, and military justice training programs.
- Provide legal advice and support to the civilian personnel office and equal employment opportunity office.
- Provide legal advice and support to the Family Advocacy Case Review Committee.
- Serve as the command ethics counselor and appoint ethics counselors as appropriate.
- Assist with litigation in which the United States has an interest.
- Support training programs for Reserve Components legal personnel and units.
- Provide legal advice and support concerning intelligence activities.

### **The Deputy Staff Judge Advocate**

4-24. The deputy SJA is the second-most-senior judge advocate assigned to the OSJA and serves as the SJA's executive officer. While the SJA is the primary legal advisor to the command, the deputy SJA is responsible for the day-to-day administration, training, and execution of the OSJA activities. As the second member of the OSJA's senior leadership team, the deputy SJA coordinates the efforts of the legal administrator and command or chief paralegal NCO throughout the OSJA. The deputy SJA ensures that every member of the OSJA receives the mentorship, training, equipment, and support to meet mission requirements consistent with the SJA's intent. The deputy SJA serves as the acting SJA in the SJA's absence and therefore is always prepared to assume the SJA's duties and responsibilities. The deputy SJA may supervise legal services at a separate location during split-based operations. Such operations may include serving as the SJA of the rear detachment when the SJA deploys with the forward element.

### **The Legal Administrator**

4-25. The legal administrator is an Army warrant officer with specialized training and expertise in law office management and operations. The legal administrator is the third member of the OSJA's senior leadership team and the officer in charge of the administrative section. Legal administrators are directly responsible for OSJA human resources management and support, information management systems, facilities and equipment, resource management, and the security of OSJA facilities, equipment, and classified materials. Additionally, legal administrators contribute to and support the training requirements of OSJA personnel. The legal administrator builds and maintains effective working relationships with key personnel throughout the area of operations to enable OSJA personnel to meet their mission requirements.

### **The Command or Chief Paralegal NCO**

4-26. The command or chief paralegal NCO is the senior enlisted Soldier in the OSJA of a division, corps, or ASCC, and the fourth member of the OSJA's senior leadership team. A command paralegal NCO is normally a sergeant major who serves at division and corps OSJAs, while a chief paralegal NCO is normally a master sergeant who serves at ASCC OSJAs. This senior enlisted leader advises SJAs, commanders, and command sergeants major on all paralegal Soldier issues within the OSJA as well as those arising from subordinate units. The command or chief paralegal NCO is also the primary field representative of the regimental command sergeant major of the JAGC. Additionally, the command or chief paralegal NCO provides technical supervision of all paralegal Soldiers assigned to or supported by the OSJA and is primarily responsible to the SJA for the deployment readiness of OSJA personnel. The chief paralegal NCO, like the legal administrator, builds and maintains effective working relationships with key personnel throughout the area of operations to enable OSJA personnel to meet their mission requirements.



### **Civilian Advisor**

4-27. The civilian advisor—a civilian attorney selected by the SJA—is best suited to provide advice and perspective regarding office issues. Including a civilian advisor in the foundation of five recognizes the key role of civilian employees as mentors and leaders in legal organizations. The civilian advisor helps improve office communication flow to all personnel and gives the SJA a valuable civilian perspective regarding the delivery of legal services and office management.

### **Civilian Attorneys**

4-28. Civilian attorneys assigned to the OSJA may perform many of the same legal duties as judge advocates. They regularly provide a depth of expertise and continuity in a particular legal discipline. They may also have supervisory responsibilities, to include those of a division chief, however, civilian attorneys do not advocate before courts-martial. Their role in administrative board proceedings is also more limited than that of judge advocates. While civilian attorneys assigned to the OSJA may serve as legal advisors to administrative boards, they do not serve as recorders. Additionally, they may only act as counsel for respondents if they are not being compensated for the service, if such representation is not inconsistent with the faithful performance of their regular duties, and if the representation is limited to periods outside their normal hours of employment, such as official leave status.

### **Division Chief**

4-29. Division chiefs are responsible for the mission success of their respective divisions within the OSJA. Typically, a corresponding division within the OSJA addresses legal issues arising in each core legal discipline. For example, members of the military justice division address military justice matters. Division chiefs lead and supervise judge advocates, civilian attorneys, paralegals, and civilian legal support staff in the delivery of legal support within their divisions. Division chiefs advise the SJA and deputy SJA concerning all matters falling within the scope of their particular divisions and train subordinates in the legal skills required by the discipline.

### **Subordinate Judge Advocates**

4-30. Subordinate judge advocates within the OSJA perform legal duties under the supervision of a division chief. They review actions for legal sufficiency; investigate factual matters related to legal actions; write legal opinions; prepare legal actions; and provide legal assistance and other client services to Soldiers and their family members. Subordinate judge advocates also advise commanders, staff officers, and personnel; participate in staff working groups or teams; advocate before courts-martial and administrative decisionmaking bodies; and review, adjudicate, and settle claims on behalf of and against the United States. Judge advocates supervise paralegals and civilian legal support staff who assist in performing these tasks.

### **Paralegal NCOs and Soldiers**

4-31. Paralegal NCOs serve as enlisted leaders and subject matter experts within their respective divisions or sections, assuming responsibility for the effective and efficient operation of the division or section where they serve. They also bear primary responsibility to train, mentor, and develop junior paralegal Soldiers to the required level of expertise necessary to effectively contribute to mission success within their respective divisions or sections. Some paralegal NCOs serve as division or section NCOs in charge. They therefore serve as senior enlisted advisors to the division chiefs or officers in charge, much the same way the command or chief paralegal NCO serves as the senior enlisted advisor to the SJA.

4-32. Paralegal Soldiers provide support in all of the core legal disciplines, under the supervision of judge advocates, civilian attorneys, and paralegal NCOs. Paralegal Soldiers, like all JAGC personnel, are subject to the same rules of professional responsibility. They do not provide legal advice but support the legal services provided by judge advocates and civilian attorneys at all levels within the Army.

## THE OFFICE OF THE STAFF JUDGE ADVOCATE–BRIGADE LEGAL SECTION RELATIONSHIP

4-33. Providing legal support to all levels of command remains the chief mission of all JAGC personnel. However, personnel at the OSJA and the brigade legal section may identify different ways and means to accomplish this mission. These potentially different views stem from the increased capabilities of BCTs and other brigades and the assignment of JAGC personnel directly to the BCTs and other brigades. Though support and coordination issues may arise, both organizations focus on the same end state: providing high quality, reliable legal services to the command across all types of operations. OSJA and brigade legal section personnel build and maintain an ongoing, professional, working relationship. This relationship enables JAGC personnel at all levels to focus their efforts toward mission accomplishment. This field manual does not attempt to address all OSJA-brigade legal section issues concerning support and coordination, but certain aspects of the OSJA-brigade legal section relationship merit specific consideration: rapport, legal oversight, direct supervision, and technical training.

### RAPPORT

4-34. Notwithstanding the increased decentralization inherent in the modular force, JAGC personnel at all echelons understand the importance of maintaining positive working relationships with one another. Rapport is critical for mission success—for both the JAGC and the Army. As senior leaders of the JAGC, the OSJA leadership takes every opportunity to teach, mentor, and support the brigade legal section for mission success. Similarly, brigade legal section personnel support the OSJA to accomplish its mission. JAGC personnel at every level display the requisite professionalism and maturity and adhere to these principles. These relationships will be of special interest to TJAG and the regimental sergeant major during Article 6 visits.

### LEGAL OVERSIGHT

4-35. The nature of the legal profession often requires a stronger technical chain of supervision along JAGC channels than is present in other Army branches. There are several reasons for this enhanced legal oversight. TJAG has a statutory obligation to “direct the members of the JAGC in the performance of their duties” under Title 10, U.S. Code, section 3037 (2010). TJAG also has the unique requirement to meet professional legal responsibilities under AR 27-26. Furthermore, all judge advocates are attorneys subject to civilian rules of professional conduct, continuing education requirements, and professional discipline from their licensing organization, which requires enhanced technical supervision along JAGC channels. Finally, under Title 10, U.S. Code, section 806(b) (2010), the SJA or legal officer of any command is entitled to communicate directly with the SJA or legal officer of a superior or subordinate command, or with TJAG.

4-36. As the next senior judge advocate in the brigade judge advocate’s technical chain, the SJA should provide brigade judge advocates with technical guidance, direction, and insight on legal issues. Exercise of this function by the SJA can be based on policies and procedures agreed upon in advance with the brigade judge advocate, or it may be event-driven, based solely on the SJA’s professional judgment. Brigade judge advocates are presumed to be experienced enough to determine when to request technical guidance from the SJA. Situations that warrant technical guidance by the SJA include the following:

- Soldier misconduct that will likely result in action by the GCMCA.
- Any complex or high-profile military justice matter.
- Clarification of rules of engagement.
- Issues requiring specialized expertise not resident in the brigade legal section, such as government contracting or ethics.
- Situations where the brigade judge advocate is contemplating issuing a legal opinion contrary to a legal opinion or interpretation issued by the division OSJA.

## **DIRECT SUPERVISION**

4-37. A SJA's relationship with the brigade judge advocate sometimes exceeds mere technical supervision—specifically in military justice matters. In garrison, the trial counsel works at the OSJA military justice section but will deploy with the brigade. While deployed, the SJA supervises the trial counsel's performance. Whether in garrison or during a deployment, it is essential that continuous, close coordination on military justice matters exists between OSJAs and brigade legal sections.

## **TECHNICAL TRAINING**

4-38. SJAs do not normally have the authority to impose training requirements directly on brigade legal section personnel working at a brigade headquarters. Nevertheless, OSJA leaders should take every opportunity to teach, coach, and mentor brigade legal section personnel on legal and professional subjects as well as include the brigade legal section at appropriate events. To this end, the OSJA leadership should do the following:

- Invite and encourage brigade legal section personnel to attend formal OSJA training events such as professional responsibility training, professional development classes, staff rides, or sergeants' time.
- Ensure that brigade legal section personnel are informed of training opportunities made available to the OSJA (such as legal conferences, seminars, and continuing legal education). OSJA leaders should also provide justification to brigades to secure the allocation of unit funds to enable the attendance of brigade legal sections personnel at professional development courses.
- Establish procedures for regular, effective communication. Examples include routine meetings or information-sharing sessions where technical topics are discussed. Frequent and candid communication between the OSJA and brigade legal section is essential. Whenever practical, this communication should occur face-to-face.

## **U.S. ARMY TRIAL DEFENSE SERVICE**

4-39. The provision of criminal defense services to Soldiers stands as a hallmark of American and military jurisprudence. It ensures that Soldiers enjoy the constitutional and legal protections that they swear to support and defend for others. Members of the United States Army Trial Defense Service (USATDS), and those who support the USATDS mission, provide defense legal services to Soldiers facing adverse actions taken against them by the Army. Trial defense counsel represent Soldiers at general and special courts-martial, Article 32 hearings, pre-trial confinement hearings, UCMJ proceedings, and before administrative boards as well as other administrative separation actions. They counsel Soldiers suspected of criminal offenses, pending nonjudicial punishment (Article 15), and at summary courts-martial. Additionally, trial defense counsel may provide limited legal counsel and representation to Soldiers facing minor disciplinary actions or in need of legal assistance services, but only in cases where the OSJA and the servicing USATDS office enter into a memorandum of agreement.

4-40. It is imperative that all Army personnel understand and appreciate the USATDS mission. Counseling and representing Soldiers suspected of committing misconduct may be improperly perceived as at odds with the mission of the unit from which the Soldier comes or even as actions that are contrary to the interests of the Army. Such perceptions have no merit. Any actions or comments that impede the lawful, professional, moral, and ethical responsibilities of USATDS personnel are inconsistent with the mission, duties, and responsibilities of the JAGC and the Army. All JAGC Soldiers, regardless of the organization to which they are assigned, ensure that Soldiers of other branches understand the necessity of the USATDS mission. Belief in, and adherence to, principles such as the rule of law is a significant source from which Soldiers draw national power.

4-41. Trial defense services are provided through regional trial defense teams and trial defense teams. The regional trial defense team comprises a regional defense counsel (usually an O-5), a senior defense counsel (usually an O-4), and a paralegal NCO (usually an E-6). The trial defense team usually consists of one senior defense counsel, three trial defense counsel (usually O-3s), and one paralegal NCO (usually an E-5). The regional trial defense team provides operational control, training, and technical supervision for as

many as four trial defense teams. The regional trial defense team assigns cases and trains, supervises, and assists trial defense counsel in counseling clients and preparing actions.

4-42. Regional and trial defense teams are assigned to the headquarters and headquarters company of a sustainment brigade; however, they remain attached to the United States Army Legal Services Agency for all purposes except administrative and logistic support. The Chief, USATDS, exercises independent supervision, control, and direction over the defense counsel and the USATDS mission.

4-43. While in reserve status, Army Reserve trial defense personnel are assigned to trial defense teams and regional trial defense teams, under the mission command of the Headquarters, Legal Operations Detachment–Trial Defense (LOD-TD). These teams operate under the technical supervision of the Chief, USATDS, through legal support organization commanders. Similarly, while functioning under the authority of Title 32, Army National Guard (ARNG) regional and trial defense teams are assigned to their respective states, and they operate under the technical supervision of Chief, USATDS, through the Chief, ARNG Trial Defense Service. Upon mobilization, both United States Army Reserve and ARNG trial defense personnel fall under the operational control of USATDS. See appendix B.

4-44. JAGC personnel providing military defense services to Soldiers carry significant responsibilities to conduct their affairs in accordance with AR 27-26. Judge advocates and paralegals charged with the USATDS mission provide counsel and representation to Soldiers who have little or no familiarity with the military justice system. Judge advocates and paralegal Soldiers conduct themselves and their affairs so as to instill in Soldiers a high degree of confidence in the individuals who represent them, as well as in the military justice system overall. Judge advocates assigned to USATDS act independently of any other branch and the local OSJA to which they are otherwise attached or affiliated for administrative or logistic support. Paralegal Soldiers and NCOs will likewise conduct themselves in accordance with the responsibilities of nonlawyer assistants set forth in Rule 5.3 of AR 27-26.

## **THE OFFICE OF THE STAFF JUDGE ADVOCATE–U.S. ARMY TRIAL DEFENSE SERVICE RELATIONSHIP**

4-45. USATDS personnel receive administrative and logistic support from designated installations or organizations as set forth in AR 27-10. This includes the provision of paralegal NCOs and Soldiers. TJAG specifies that this support is essential to the performance of the defense mission. Paralegal support at the trial defense team level is especially critical to mission success. Authorizations for trial defense team enlisted personnel appear on the sustainment brigade table of organization and equipment. However, SJAs and command or chief paralegal NCOs should actively coordinate the trial defense team paralegal assignment process with regional and senior defense counsels as they would for their respective OSJAs. This coordination ensures that paralegal support to the trial defense teams meets the requirements set forth in AR 27-10.

4-46. All JAGC personnel are expected to advocate zealously on behalf of their clients. As such, disagreements between OSJA and USATDS personnel are inherent in the adversarial process. Leaders at all levels of the JAGC share a common duty to foster professional relationships between OSJA and USATDS personnel. Such professional relationships succeed when all JAGC personnel display mutual respect and support for each other's roles and responsibilities.

4-47. OSJA and brigade legal section leaders make all efforts to ensure USATDS support is consistent with the support provided to other sections within the OSJA and to that provided the brigade legal section. Additionally, OSJA leaders make all training opportunities equally known and available to USATDS personnel, as they would be for OSJA personnel.

## **CENTERS**

4-48. Centers include the Center for Law and Military Operations, combat training centers, and the Mission Command Training Program.

## **CENTER FOR LAW AND MILITARY OPERATIONS**

4-49. The Center for Law and Military Operations (CLAMO) is located at The Judge Advocate General's Legal Center and School. This joint, interagency, and multinational legal center collects and synthesizes data relating to legal issues arising in military operations, manages a central repository of information relating to such issues, and disseminates resources addressing these issues. CLAMO helps develop doctrine, organization, training, materiel, leadership, personnel, and facilities as these areas affect the military legal community.

4-50. Key to facilitating CLAMO's mission is the after action review process. All judge advocate personnel must complete an after action review (AAR) in the prescribed format located at appendix C with CLAMO upon redeployment. This AAR may either be conducted with a member of CLAMO in person, electronically, or by telephone. Legal offices or sections compile AAR comments from within their organization prior to conducting the AAR with CLAMO. The legal lessons learned and experiences captured within the AAR process contribute to improving current and future legal support to the operational Army through the timely distribution of this data in a variety of formats. CLAMO produces publications, instruction, and databases accessible to operational forces, worldwide. Additionally, CLAMO responds directly to questions from judge advocates in the field and coordinates with judge advocate trainers at the combat training centers and Mission Command Training Program.

## **COMBAT TRAINING CENTERS AND MISSION COMMAND TRAINING PROGRAM**

4-51. Judge advocates and paralegal Soldiers assigned to the combat training centers train legal personnel assigned to brigades. With prior coordination with the brigade judge advocates, they develop realistic training scenarios and events designed to anticipate current or expected conditions in the anticipated theater of operations as part of the unit's pre-deployment training. Through exposure to all aspects of legal operations in a realistic training environment, brigade legal personnel receive feedback on their legal support to the command. The judge advocate trainers provide feedback through an AAR and on-the-spot observations designed to facilitate best practices and improvements of legal support.

4-52. The Mission Command Training Program conducts training for BCTs, divisions, corps, ASCCs, JFLCCs, and JTFs. The judge advocates at the Mission Command Training Program serve as coaches and trainers for commanders, staffs, and judge advocates for applying legal resources and support throughout the planning and execution phases of exercises. By providing instruction on processes and systems designed to facilitate legal support to the command, these exercises provide legal offices and personnel feedback designed to enhance legal support when deployed.

4-53. Judge advocates at all levels should take advantage of the opportunities presented to prepare themselves and their units for providing legal support during military operations. The training provided by judge advocates at combat training centers and the Mission Command Training Program as well as the resources provided by CLAMO are keys to success.

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## Chapter 5

# The Core Legal Disciplines

This chapter provides a detailed description of the core legal disciplines. They include military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.

### MILITARY JUSTICE

5-1. Military justice is the administration of the Uniform Code of Military Justice. The purpose of military justice, as a part of military law, is “to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States” (*Manual for Courts-Martial*). The Judge Advocate General (TJAG) is responsible for the overall supervision and administration of military justice within the Army. Commanders oversee the administration of military justice in their units and communicate directly with their staff judge advocates (SJAs) about military justice matters. Three organizational components of military justice exist within the Judge Advocate General’s Corps (JAGC): the SJA; the Chief, United States Army Trial Defense Service (USATDS); and the Chief, U.S. Army Trial Judiciary.

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**Note:** Use of the term “SJA” in this chapter denotes the SJA at the appropriate level of command.

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5-2. The SJA is responsible for military justice advice and services to the command. The SJA advises commanders concerning administrative boards, the administration of justice, the disposition of alleged offenses, appeals of nonjudicial punishment, and action on courts-martial findings and sentences. The SJA supervises the administration and prosecution of courts-martial, preparation of records of trial, the victim-witness assistance program, and military justice training.

5-3. The Chief, USATDS exercises supervision, control, and direction of defense counsel services in the Army. Judge advocates assigned to the USATDS advise Soldiers regarding judicial and nonjudicial disciplinary matters and represent Soldiers before courts-martial and administrative boards.

5-4. The Chief Trial Judge, U.S. Army Trial Judiciary, provides military judges for general and special courts-martial, supervises judges, promulgates rules of court, and supervises the military magistrate program. Military judges of the U.S. Army Trial Judiciary, who are not within the local chain of command or the technical chain of the SJA, have specific tasks. They preside at general and special courts-martial, maintain judicial independence and impartiality, conduct training sessions for trial and defense counsel, perform or supervise military magistrate functions, and may be detailed to preside over military commissions. Military magistrate functions include the review of pretrial confinement and confinement pending the outcome of foreign criminal charges and the issuance of search, seizure, or apprehension authorizations.

5-5. Military justice services are centralized to facilitate timely and efficient delivery. Normally, courts-martial are processed at theater army, corps, division, theater sustainment command (TSC), or other headquarters commanded by a general court-martial convening authority (GCMCA). Army brigade and battalion commanders, as well as joint task force commanders, have special and summary court-martial convening authority and may require support to conduct courts-martial.

5-6. The convening authority may designate where the court-martial will meet consistent with Rules for Courts-Martial (RCM) 504(d) and 906(b)(11) and with the rulings of the military judge. SJAs provide

military justice advice to GCMCAs, including joint force commanders who are GCMCAs. Other judge advocates provide military justice advice to subordinate commanders.

5-7. Paralegal noncommissioned officers (NCOs) and Soldiers in battalion, brigade, and higher headquarters prepare and manage military justice actions, and provide technical and administrative support for military justice.

5-8. In multinational organizations, each troop contributing nation is responsible for the discipline of its military personnel. Accordingly, the U.S. element of the multinational organization will require military justice support.

5-9. Trial defense and judiciary services are provided on an area basis under the independent supervision and control of USATDS and U.S. Army Trial Judiciary, respectively. The Chief, USATDS and Chief Trial Judge, U.S. Army Trial Judiciary supervise defense teams and military judge teams, respectively, and are solely responsible for determining their places of duty and caseloads. Under the direction of the regional and senior defense counsels, trial defense counsel travel as far forward as required throughout the area of operations to provide advice and services. Military judges are normally co-located with the Office of the Staff Judge Advocate (OSJA) at a command headquarters or they travel into the area of operations for periodic trial terms, depending upon judicial workloads. Military justice support transitions smoothly across the spectrum of conflict, providing continuity in jurisdictions and responsive support to commanders. Critical to success are prior planning, mission training, staff augmentation, and—particularly in the case of the USATDS—the provision of sufficient paralegal assets and logistic support to defense counsel.

5-10. Legal administrators review and provide technical oversight and support for witness procurement, court-martial orders, and other administrative documents. They sign official court-martial documents and orders on behalf of general and special court-martial convening authorities. They provide technical support and advice for automated trial preparation, presentation, and case management and serve as the local administrator for military justice knowledge management systems. In both garrison and deployed environments, they provide guidance and direction to the criminal law NCO in charge and senior court reporter with the planning, resourcing, establishment, and furnishing of courtroom facilities. Legal administrators facilitate the travel of civilian witnesses and defense counsel through coordination with higher headquarters and, where necessary, other government agencies. They also draft and process contracts for employing expert witnesses testifying at courts-martial and may review records of trial as part of the post-trial process.

5-11. Paralegal NCOs and Soldiers interview witnesses, prepare courts-martial documents, draft charges and specifications, and record and transcribe judicial and administrative proceedings and investigations. They prepare and manage records of nonjudicial punishment, memoranda of reprimand, and officer and enlisted administrative separation documents. They facilitate witness and court member appearance. They also coordinate and support logistically all legal proceedings and hearings from administrative separation boards to general courts-martial. They assist judge advocates appointed as Special Assistant U.S. Attorneys to prosecute criminal offenses in U.S. magistrate and district courts and war crime tribunals. Senior paralegal NCOs in charge of military justice and criminal law sections review all legal documentation. They ensure accuracy and timely processing prior to review by the deputy SJA, SJA, and convening authority.

5-12. Paralegal NCOs and Soldiers with additional skill identifier C5 are court reporters. In addition to the duties discussed in paragraph 5-11, they record and transcribe verbatim records of courts-martial, administrative proceedings, Article 5 tribunals, and other proceedings as required by law or regulation.

5-13. To prepare to deploy, a military justice attorney may perform the following tasks:

- Align the convening authority structure for the deployment theater and home station.
- Ensure that units and personnel are assigned or attached to the appropriate organization for the administration of military justice.
- Request or accomplish required designations of home station convening authorities.



- Transfer individual cases to new convening authorities when necessary.
- Publish a general order for the operation when not withheld by higher headquarters. Mission training will include briefings to deploying and home station commanders concerning military justice operations and briefings to deploying Soldiers concerning the terms of the general order for the operation.

## INTERNATIONAL AND OPERATIONAL LAW

5-14. International law is the application of international agreements, U.S. and foreign law, and customs related to military operations and activities. Operational law is the body of domestic, foreign, and international law that directly affects the conduct of military operations.

### INTERNATIONAL LAW

5-15. Within the Army, the practice of international law includes the interpretation and application of foreign law, comparative law, martial law, and domestic law affecting military operations overseas. The SJA's international law responsibilities include the following:

- Implement the Department of Defense (DOD) Law of War Program, which includes law of war training, advice concerning the application of the law of war (or other humanitarian law) to military operations, the determination of enemy prisoner of war (EPW) status, and the supervision of war crime investigations and trials.
- Assist with international legal issues relating to deployed U.S. forces, including the legal basis for conducting and funding operations, status-of-forces and other international agreements, and the impact of foreign law on Army activities, contractors, and dependents.
- Monitor foreign trials and confinement of Army military and civilian personnel and their dependents.
- Assist with legal issues in intelligence, security assistance, counterdrug operations, and rule of law activities.
- Advise the command concerning the authority to negotiate and execute international agreements, including United Nations resolutions.
- Serve as legal liaison with host or multinational legal authorities.

5-16. Normally, the SJA provides international law support at the main and tactical command posts in the divisions and corps, TSC headquarters, theater army headquarters, and each joint and multinational headquarters. In addition, international law support may be required at brigade and battalion headquarters. International law tasks vary from phase to phase but are designed to ensure operational capability and support international legitimacy through all phases of an operation.

5-17. The SJA and international law attorneys thoroughly understand the contingency plan and the international laws affecting operations. They ensure the contingency plan complies with international legal obligations, including obligations to EPWs and civilians. They also identify requirements for additional agreements, forward these requirements through higher headquarters to the proper negotiation authority, and, when authorized, undertake negotiation of such agreements. They also identify and obtain relevant international agreements such as status-of-forces agreements, exchanges of diplomatic notes, and acquisition and cross-servicing agreements. International law planning objectives include informing the commander and staff of the international legal obligations on the force, minimizing legal obligations or their effects on the force, protecting the legal status of unit personnel, ensuring rights of transit, and providing responsive and economical host-nation support.

5-18. The SJA will liaise with the International Committee of the Red Cross; the Department of State (DOS) country team for the operational area; legal officials in the host-nation and coalition forces; and other government, nongovernmental, and international organizations as directed by the commander. These liaisons are to establish working relationships that help sustain the operation; to coordinate the legal aspects of the deployment and entry; to confirm understanding of agreements concerning status of forces, rights of transit, basing, and host-nation support; and to ensure compliance with international legal requirements.

5-19. Advice to the commander may involve the law of war, including advice to the EPW team; interpretation of international agreements; treatment of civilians or foreign diplomats; assistance to international organizations, U.S., or host-nation government organizations, or nongovernmental organizations; and other international legal matters. Legal processes include the investigation and trial of war crimes, Article 5 tribunal proceedings, due process procedures for detainees, foreign criminal trials of U.S. personnel, foreign civil or administrative proceedings, and proceedings conducted under occupation or martial law.

## **OPERATIONAL LAW**

5-20. Operational law encompasses the law of war but goes beyond the traditional international law concerns to incorporate all relevant aspects of military law that affect the conduct of operations. Judge advocates provide operational law support in all military operations. The operational law judge advocate supports the military decisionmaking process (MDMP) by preparing legal estimates, designing the operational legal support architecture, writing legal annexes, assisting in the development and training of rules of engagement (ROE), and reviewing plans and orders. The operational law judge advocate supports the conduct of operations by maintaining situational awareness as well as advising and assisting with lethal and nonlethal targeting, with particular emphasis on ROE implementation, and detainee operations. In stability operations, judge advocates perform activities to establish civil security, civil control, essential services, economic and infrastructure development, and governance. Operational law also involves the provision of the core legal services that sustain the force. In order to perform these functions, the legal advisor must have a dedicated seat in the operations center.

5-21. Brigade legal sections normally provide operational law support at each brigade headquarters whereas the OSJAs provide operational law support at each key operational cell at every higher level of command. Operational law support is also provided at each joint and multinational headquarters. Some missions also require operational law support at the battalion level or in specialized units or operational cells.

5-22. Paralegal NCOs and Soldiers help investigate and report alleged law of war violations. They provide critical support in implementing the DOD Law of War Program by teaching law of war and code of conduct classes. Paralegal NCOs and Soldiers, under the supervision of judge advocates, conduct stability operations by directly participating in tasks to establish civil security, civil control, essential services, economic and infrastructure development, and governance. Paralegal NCOs and Soldiers support the MDMP by preparing legal estimates and other operational law memoranda, designing the operational legal support structure, writing legal annexes and appendixes to base operation orders, assisting in the development and training of ROE and law of war, and reviewing plans and orders. Paralegal NCOs and Soldiers, as key members of the staff, provide support during the conduct of operations by maintaining situational awareness and assisting with targeting and ROE implementation. Paralegal NCOs and Soldiers provide support for the accurate and timely processing of EPWs and detainees. Paralegal NCOs and Soldiers with the additional skill identifier 2S are trained to serve on unit staffs. In addition to the above duties, they may serve as a legal representative in the targeting cell for brigade-level units and higher; be integrated in key command planning cells; and deploy as an integral member of the staff for brigade-level units and higher. Paralegal NCOs and Soldiers do not provide legal advice.

5-23. Prior to operations, operational law judge advocates, paralegal NCOs, and Soldiers conduct contingency planning, deployment preparation, and training. Operational law judge advocates develop staff skills and working relationships at all times, not merely before deployment. Deployment preparation is a cooperative effort among the operational law judge advocate, the command or chief paralegal NCO, the legal administrator, and other key personnel. It includes developing standard operating procedures, identifying deploying personnel, marshaling resources, and establishing liaisons. This predeployment training develops the Soldiering and legal skills of legal personnel, provides mission-related legal information to unit personnel, integrates legal personnel into the unit, and establishes working relationships with Reserve Components legal personnel who will support the deployment. Briefings to deploying personnel should cover the legal basis for the operation, the legal status of deploying personnel, the relevant country law, guidance on the treatment of civilians in the operational area, and the applicability of the law of war or other humanitarian law.

5-24. Operational law judge advocates, with the assistance of paralegal NCOs and Soldiers, conduct mission briefings for deploying personnel regarding ROE, general orders, code of conduct, law of war, and other appropriate legal topics; conduct final mission planning; and coordinate legal support for individual deployment readiness.

5-25. During a deployment, operational law tasks related to the conduct of operations become more critical. Operational law judge advocates maintain situational awareness to provide effective advice about lethal and nonlethal targeting, ROE, proposed plans for information operations, and legal aspects of current operations. For this reason, operational law judge advocates deploy with their automation equipment, vehicles, radios, and global positioning devices in a sequence that ensures their presence in key operational cells at all times. Deployed paralegal NCOs and Soldiers help the operational law judge advocate maintain situational awareness by attending briefings, monitoring e-mail traffic, tracking the battle, and providing other required assistance. Upon arrival in the area of operations, operational law judge advocates organize and coordinate the delivery of legal services in all core legal disciplines in accordance with the legal annex to the operation plan or operation order.

5-26. Legal administrators manage several support systems during deployment and redeployment. They deploy with the OSJA cell to ensure quality legal services forward. They coordinate with staff elements and higher headquarters to ensure that the OSJA is properly manned, equipped, trained, and funded to support legal operations. Legal administrators acquire adequate facilities and resources for the OSJAs, including separate facilities for the military judge, defense counsel, trial counsel, and legal assistance functions. They frequently manage resources in both the deployed office and the office in garrison to ensure that the delivery of legal services is uninterrupted. When necessary, legal administrators represent the OSJA in the tactical operations center, serve as convoy commanders, field ordering officers, and duty officers, but legal administrators do not provide legal advice.

5-27. Rule of law activities create security and stability for the civilian population by restoring and enhancing the effective and fair administration and enforcement of justice. Stability operations are a core U.S. military mission, and rule of law activities are critical to the success of stability operations. Rule of law activities are particularly significant in the immediate aftermath of major combat operations. At this time, military forces must restore order to the civilian population that almost inevitably results when combat disrupts the routine administration of the society. Many tasks associated with rule of law require specialized legal expertise. See chapter 10 for more information on rule of law activities.

5-28. Intelligence law addresses legal issues in intelligence activities and interrogation operations. As the commander's advisor on the legal aspects of all warfighting functions, operational law judge advocates ensure that they understand and consider intelligence law when planning and reviewing operations. Detainee operations law is composed of those policies and national and international laws that address the treatment and status of persons detained by U.S. forces. An operational law judge advocate supporting detainee operations may perform the following functions:

- Advise the commander and other personnel responsible for detention operations on all matters pertaining to compliance with applicable policy, international, and national law.
- Provide legal advice on the proper composition and function of tribunals required to determine detainee status in accordance with the Geneva Conventions.
- Provide initial and refresher training regarding treatment standards for detainees to all personnel involved in detainee operations including the detaining Soldiers, interrogators, and the internment facility commander.
- Advise the appropriate commander regarding investigation of suspected maltreatment or abuse of detainees or other violations of applicable law or policy.

## **ADMINISTRATIVE AND CIVIL LAW**

5-29. Administrative and civil law is that body of law containing the statutes, regulations, and judicial decisions that govern the establishment, functioning, and command of military organizations as well as the duties of military organizations and installations with regard to civil authorities. Availability of personnel, resources, and office space often affects how a legal office covers this core discipline. Larger legal offices often separate administrative law and civil law into separate branches within the office.

## ADMINISTRATIVE LAW

5-30. A number of DOD and Army regulations govern and regulate military command decisions and policies. Generally, the practice of administrative law involves legal support and advice to commanders in various specialized areas concerning DOD and Army regulations. These specialized areas include military personnel law, investigations, relationships with private organizations, military installations, and government ethics.

5-31. Administrative law attorneys perform the following tasks:

- Advise commanders and staff, review administrative actions, and litigate cases involving military personnel law.
- Advise summary court-martial and investigating officers, review investigations for legal sufficiency, and advise appointing authorities concerning investigative findings and recommendations.
- Advise Army officials concerning support for and relationships with private organizations.
- Advise installation commanders concerning the legal authorities applying to military installations.
- Advise Army personnel concerning government ethics.
- Supervise the command financial disclosure and ethics training programs.

5-32. Administrative law support is usually provided at brigade headquarters, main and tactical command posts in the modular divisions and corps, TSC headquarters, Army Service component command headquarters, and each joint and multinational headquarters. Because of the many issues they face, administrative law attorneys complete technical legal research and writing. The legal research capabilities and technical support structure are robust to provide specialized legal knowledge and flexibility to solve different problems as an operation progresses.

5-33. During operations, administrative law attorneys spend considerable time and effort on command investigations, as these may significantly impact the unit and mission. They advise on the release of information pertaining to safety or mishap investigations in accordance with AR 385-10. They also supervise the government ethics program, including filing financial disclosure forms, even in a deployed environment.

5-34. Paralegal NCOs and Soldiers help judge advocates and civilian attorneys review documents including financial liability assessments, AR 15-6 investigations, and other administrative documents. Additionally, they prepare legally sufficient documents related to these and other matters. Paralegal NCOs and Soldiers ensure that all actions are tracked, processed, and filed to ensure the prompt and efficient delivery of services to the commander and staff.

## CIVIL LAW

5-35. The practice of civil law includes those specialized areas of the law that are concerned with statutes and regulations that apply across all agencies of the Federal government and are not simply internal to the Army or DOD. The practice of civil law also includes matters that are subject to civil litigation in various forums. Some specific areas of the law that fall into this category include environmental law, the law of federal employment, federal labor relations, government information practices, federal litigation, regulatory law, and intellectual property law.

5-36. Civil law attorneys perform the following tasks:

- Provide advice on environmental law matters concerning statutes, regulations, and judicial decisions relating to Army activities affecting the environment—including navigable waters, near-shore and open waters and any other surface water, groundwater, drinking water supply, land surface or subsurface area, ambient air, vegetation, wildlife, and humans. Overseas, host-nation law may also affect Army operations.
- Monitor state and Federal environmental legislative and regulatory developments.
- Provide advice concerning the appropriateness of any environmental enforcement activities.

- Represent Army activities in environmental litigation and at hearings before local, state, or Federal agencies in coordination with the Chief, Environmental Law Division, Office of The Judge Advocate General; United States Army Legal Services Agency; and the Department of Justice.
- Advise Army officials regarding their obligations under the Freedom of Information Act and the Privacy Act.
- Advise Army officials concerning labor relations, including certifying and negotiating with labor unions, grievances and arbitration, and unfair labor practice allegations.
- Advise Army officials concerning the recruiting, hiring, evaluating, and disciplining of employees.
- Represent the Army in litigation arising from employee grievances and discrimination complaints.
- Provide legal advice and counsel to Army officials concerning all matters involving appropriated and nonappropriated fund civilian employees, including hiring, evaluation, discipline, reductions in force, whistleblower protection, and complaint processing.
- Represent the Army in third-party proceedings arising from employee grievances, appeals, discrimination complaints, and labor relations matters.
- Review all draft environmental orders, consent agreements, and settlements with Federal, state, or local regulatory officials before signature.

5-37. Paralegal NCOs and Soldiers help judge advocates and civilian attorneys review documents including Freedom of Information Act requests, subpoenas and other documents related to civil litigation, and documents processed for release to ensure compliance with the Privacy Act. Additionally, they assist by preparing legally sufficient documents related to these and other matters. Paralegal NCOs and Soldiers track, process, and file all actions to ensure the prompt and efficient delivery of services to the commander and staff.

## CONTRACT AND FISCAL LAW

5-38. Contract law is the application of domestic and international law to the acquisition of goods, services, and construction. Fiscal law is the application of domestic statutes and regulations to the funding of military operations and support to nonfederal agencies and organizations.

### CONTRACT LAW

5-39. The practice of contract law includes battlefield acquisition, contingency contracting to include contracting for services, bid protests and contract dispute litigation, procurement fraud oversight, commercial activities, and acquisition and cross-servicing agreements. The SJA's contract law responsibilities include furnishing legal advice and assistance to procurement officials during all phases of the contracting process and overseeing an effective procurement fraud abatement program. The responsibilities also include providing legal advice to the command concerning battlefield acquisition, contingency contracting, use of logistics civil augmentation program, acquisition and cross-servicing agreements, the commercial activities program, and overseas real estate and construction.

5-40. Legal counsel participate fully in the acquisition process, make themselves continuously available to their clients, involve themselves early in the contracting process, communicate closely with procurement officials and contract lawyers in the technical supervision chain, and provide legal and business advice as part of the contract management team. To accomplish these actions, SJAs usually provide contract law support at the main and tactical command posts in the modular divisions and corps, TSC headquarters, theater army headquarters, and each joint and multinational headquarters.

5-41. Contract law advice may also be required at brigade or battalion headquarters, focusing mainly on simplified acquisitions, emergency acquisition flexibilities, requirements definitions, and on the use of already existing contracting methods such as the logistics civil augmentation program. SJAs should deploy a contract law attorney with early entry command posts. Judge advocates assigned to sustainment brigades, contract support brigades, theater sustainment commands, and expeditionary sustainment commands should

be trained in government contract law and fiscal law. Expertise may be required at the multinational command headquarters to give advice concerning international acquisition agreements.

5-42. Contract lawyers assist operational contract support planning by identifying the legal authorities for contracting, obtaining relevant acquisition agreements or requesting their negotiation, helping the requiring activity to define requirements, helping the contracting officer to establish procurement procedures for the operation, and reviewing the contract support integration plan for legal sufficiency. Fiscal lawyers assist the planning by identifying funding authorities supporting the mission. In preparation for deployment, these judge advocates or civilian attorneys marshal resources; assist the early entry command post's final coordination, including confirming warrants, funding sources and other legal requirements; and establish liaison with the contracting support brigade or joint theater support contracting command, if one exists, and the DOS country team in the theater of operations. Upon arrival in theater of operations, the contract and fiscal lawyers support the early entry command post missions of facilitating the deployment and entry of forces.

5-43. Because contracting and fiscal issues will increase in number and complexity, SJAs plan for additional contract law and fiscal law support as operations progress to include the creation of joint contracting centers. SJAs encourage the use of acquisition review boards since they promote prudent management of resources and proactive resolution of logistic support issues. See chapter 13 for more information on financial management and deployment contracting.

## **FISCAL LAW**

5-44. Fiscal law applies to the method of paying for obligations created by procurements. The SJA's fiscal law responsibilities include furnishing legal advice on using and spending funds properly, interagency agreements for logistic support, security assistance, and support to nonfederal agencies and organizations. Usually, SJAs provide fiscal law support at the main and tactical command posts in divisions and corps, TSC headquarters, theater army headquarters, and each joint and multinational headquarters. At the multinational command headquarters, experts may also be required to provide advice concerning international support agreements. Brigade judge advocates provide fiscal law support at the brigade level.

## **CLAIMS**

5-45. The Army claims program investigates, processes, adjudicates, and settles certain claims on behalf of and against the United States worldwide. This program works under the authority conferred by statutes, regulations, international and interagency agreements, and DOD directives. The Army claims program supports commanders by promoting the morale of Army personnel by compensating them for property damage suffered incident to service, facilitating successful operations, and promoting good will with the local population. In short, this program provides compensation for personal injury, wrongful death, or property damage caused by Army or DOD personnel.

5-46. Claims fall into four categories. First is claims for property damage of Soldiers and other employees arising incident to service. Second is torts alleged against Army or DOD personnel. Third is claims for personal injury or property damage caused by noncombat military operations. Lastly is claims by the United States for injury of Army personnel or their dependents or for the damage or destruction of Army property.

5-47. TJAG supervises the Army claims program and settles claims in accordance with delegated authority from the Secretary of the Army. The United States Army Claims Service (USARCS) administers the Army claims program and designates area claims offices, claims processing offices, claims attorneys, and foreign claims commissions. SJAs or other supervisory judge advocates operate each command's claims program and supervise the area claims office or claims processing office designated by USARCS for the command. Area claims offices and claims processing offices are the claims offices at Army installations that normally investigate, process, adjudicate, and settle claims against the United States. These offices also identify, investigate, and assert claims on behalf of the United States. Claims attorneys at each level settle claims within delegated authority and forward claims exceeding that authority to the appropriate settlement authority.

5-48. When the mission dictates, legal administrators perform additional claims-related duties. These duties include coordinating with USARCS to establish foreign claims commissions, serving as claims investigating officers and foreign claims commissions, and processing claims in their unit's operational area. Legal administrators can also serve as paying agents for foreign claims.

5-49. Paralegal NCOs and Soldiers' duties include claim intake, investigation, adjudication, and carrier recovery. In the deployed environment, paralegal NCOs and Soldiers often conduct claims missions or run claim offices where they receive foreign claims from foreign nationals, investigate and adjudicate claims, and serve as claims paying agents.

5-50. Claims are investigated and paid in an operational area. In multinational operations, unless otherwise specified in applicable agreements, a troop-contributing nation is generally responsible for resolving claims arising from its own operations. Foreign claims against the United States will normally be resolved by the Service that is assigned single-service tort claims responsibility for the area. Claims attorneys should consult DOD Instruction 5515.08. Normally the parent Service will resolve U.S. personnel claims. Army claims services are normally provided in the main and tactical command posts in the modular divisions and corps, TSC headquarters, and theater army headquarters. While claims are centrally processed at these locations, claims personnel travel throughout the operational area to investigate, negotiate, and settle claims.

5-51. Commanders should appoint unit claims officers prior to deployments. Unit claims officers investigate, document, and report incidents to claims offices that might result in a claim by or against the United States.

5-52. The SJA and the chief of claims should develop the claims procedures for the operation and provide training for claims attorneys, paralegals, and unit claims officers. The claims procedures should identify additional required claims processing offices or foreign claims commissions and describe the claims procedures applying during the operation. Additionally, foreign claims commissions members should be identified, nominated, and appointed prior to deployment. Due to the qualifications needed to serve as a foreign claims commissions member and the required coordination with USARCS, initiation of this process should occur immediately upon identification of the need for a foreign claims commissions.

5-53. Claims procedures planning factors include the type and duration of deployment, the area to which the unit is deployed, the existence of international agreements governing the presence of U.S. personnel, and the processing of claims, host-nation law, and Service claims responsibility. These procedures describe how claims are received, investigated, processed, adjudicated, and paid. Prior to deployment, the deploying claims judge advocate should coordinate with the installation claims office and the USARCS to arrange for payment of personnel claims for lost or damaged personal property that have been approved in theater of operations by electronic fund transfer. This is the only approved method by which personnel claims will be paid. Training for claims personnel should cover foreign claims procedures, prevention of property damage and personal injury, investigative techniques, and documentation of preexisting damage. SJAs and chiefs of claims coordinate with USARCS to facilitate the appointment of foreign claims commissions or claims processing offices.

5-54. During operations, claims personnel establish claims operations and perform claims services. When establishing claims operations, the senior claims attorney in theater of operations informs host-nation authorities how to process claims, provides information to the local population about claims procedures, and obtains translation services and local legal advice. It is critical for claims personnel and unit claims officers to document the existing condition of base camps, unit locations, or transportation routes when establishing claims operations. Good documentation at the beginning of an operation enables accurate payment of legitimate claims and prevents payment of fraudulent or inflated claims. When performing claims services, the senior claims attorney coordinates with unit claims officers to assist them with claims investigations. The senior claims attorney coordinates with the civil affairs staff to facilitate liaison with local officials, learn about local customs, and provide civil affairs and financial management personnel information about claims procedures. The senior claims attorney coordinates with military police and military intelligence personnel to share information. Throughout the operation, claims personnel travel throughout the operational area to receive, investigate, and pay claims.

## LEGAL ASSISTANCE

5-55. Legal assistance is the provision of personal civil legal services to Soldiers, their dependents, and other eligible personnel. The mission of the Army Legal Assistance Program is to assist those eligible for legal assistance with their personal legal affairs quickly and professionally. The program assists eligible people by meeting their needs for help and information on legal matters and resolving their personal legal problems whenever possible. The legal assistance mission ensures that Soldiers have their personal legal affairs in order before deploying. See AR 27-3 for more information on the Army Legal Assistance Program.

5-56. Once Soldiers deploy, legal assistance attorneys and other judge advocates need to resolve their legal assistance needs quickly and efficiently. Providing competent legal assistance prior to and during deployments is among the JAGC's most important functions. The Army Legal Assistance Program aims to enhance operational efficiency by assisting Soldiers with their legal issues. Legal assistance attorneys, and paralegals working under their supervision, provide legal assistance in many settings—combat readiness exercises, predeployment preparation, and Soldier readiness processing and operational or deployed settings—and through other venues—client appointments, informal requests for assistance, Federal and state income tax assistance, and preventive law programs. Regular Soldier readiness processing ensures that Soldiers and emergency-essential civilian employees have their legal affairs in order and are ready to deploy. Soldier readiness processing should review, at a minimum, Servicemembers' Group Life Insurance beneficiary designations, requirements for wills or powers of attorney, Servicemembers Civil Relief Act issues, any pending civilian or military charges, and family care plan concerns.

5-57. Legal assistance attorneys provide extensive legal services, including ministerial and notary services, legal counseling, legal correspondence, negotiation, legal document preparation and filing, limited in-court representation, legal referrals, and mediation. They handle many legal issues, including family law, estates, real property, personal property, financial, civilian and military administrative matters, immigration and naturalization matters, and taxes. Legal assistance attorneys provide legal assistance at every level. While each Service and each troop contributing nation is responsible to provide legal assistance for its personnel, some Army legal assistance may be required at joint or multinational headquarters.

5-58. Paralegal NCOs and Soldiers' legal assistance duties include interviewing and screening clients, coordinating and administering the legal portion of Soldier readiness and predeployment processing, maintaining the client records database, and preparing powers of attorney and other legal documents. Under the supervision of a judge advocate, they provide income tax assistance, manage electronic filing of income tax returns, and provide notary services. Paralegal NCOs and Soldiers may assist with will preparation, but wills themselves are prepared by judge advocates. Paralegal NCOs and Soldiers maintain the confidentiality of legal assistance clients and client information.

5-59. SJAs and command judge advocates are prepared to resolve the full range of legal assistance cases in garrison as well as in the operational area. Due to the special attorney-client relationship and the possibility of conflicting interests between commanders and Soldiers, the SJA generally designates specific judge advocates as legal assistance attorneys. Because of the increased demand for legal assistance services during deployments, the SJA may assign judge advocates who normally do not provide these duties as legal assistance attorneys. Such assignments are consistent with professional standards. Likewise, brigade judge advocates and command judge advocates face the possibility of conflicting interests between commanders and Soldiers in the course of providing legal assistance. Brigade judge advocates and command judge advocates are responsible for ensuring that deployed Soldiers receive legal assistance while simultaneously ensuring that providing such support does not conflict with their duty to provide legal support to the brigade.

5-60. Given the likelihood that conflicts will arise between the interests of Soldiers and their commanders, judge advocates responsible for providing legal assistance need to plan carefully for this mission. They may seek working arrangements with the legal offices of different commands for mutual support. They might rely on Reserve Components legal units and attached personnel for legal assistance augmentation in support of the deployment. The senior defense counsel, who may assign trial defense counsel to provide legal assistance consistent with the trial defense mission and policies, may also provide support. The garrison or higher headquarters' legal assistance office may also serve as a resource for deployed legal assistance attorneys.



## Chapter 6

# Planning

This chapter outlines the basics of planning to include design and the seven steps of the military decisionmaking process. It highlights the importance of integrating Judge Advocate General's Corps personnel into the planning staff and the planning process as early as possible. This chapter builds on the overview and discussion of doctrine and legal support to operations in Chapters 1 and 2 of this manual. Taken together, these three chapters will help Judge Advocate General's Corps Soldiers better understand legal support to Army planning and the operations process. (See FM 5-0 for more details on planning.)

### THE JUDGE ADVOCATE GENERAL'S CORPS SUPPORT TO PLANNING

6-1. Judge advocates and paralegals participate in all phases of planning. Planning is the process by which subordinate commanders and support staff translate the commander's visualization into a specific course of action for preparation and execution, focusing on the expected results. Judge advocates assist in the planning process by providing analysis and contemporaneous legal advice during the plan development phase.

6-2. To provide meaningful input and effective legal support to planning, Judge Advocate General's Corps (JAGC) personnel understand their role and the roles of the other staff representatives. Similarly, they have a sound working knowledge of the different planning procedures, including a fundamental understanding of design and the military decisionmaking process (MDMP) and a basic understanding of Army operations and legal issues attendant to each type of operation.

### THE PLANNING PROCESS

6-3. Planning is a part of the operations process that reflects a commander's analytical efforts to make decisions. The analytical approach aims to produce the optimal solution from among the solutions identified. Effective battle command requires commanders to continuously assess and lead. Assessment helps commanders better understand current conditions and broadly describe future conditions that define success. (See FM 5-0 for more details.)

6-4. Judge advocates assist commanders by providing legal advice throughout the operations and planning processes. Legal advice is based upon an understanding of the commander's intent and is shaped by situational awareness of events occurring in the operational environment.

6-5. Operational planning intends to produce an order that does the following:

- Fosters mission accomplishment by clearly conveying the commander's visualization of the mission.
- Assigns tasks and purposes to subordinates.
- Contains the minimum coordinating measures necessary to synchronize the operation.
- Allocates or reallocates resources.
- Directs preparation activities and establishes timelines or conditions for execution.
- Is executable in a legally, morally, and ethically correct manner.

6-6. The Army standard analytical approach to planning is the MDMP. Commanders at all levels will also employ an intuitive assessment in making decisions. At echelons below the brigade, manpower limitations

may constrain a commander's ability to fully employ an analytical approach to decisionmaking. At the company level and below, commanders will generally use a more intuitive approach to planning by using troop leading procedures. (Troop leading procedures are discussed in FM 5-0.)

## **DESIGN**

6-7. Design is a methodology for applying critical and creative thinking to understand, visualize, and describe complex, ill-structured problems and develop approaches to solve them. It enables commanders to view a situation from multiple perspectives, draw on varied sources of situational knowledge, and leverage subject matter experts while formulating their own understanding. Design provides an approach for how to generate change from an existing situation to a desired objective or condition.

6-8. The design methodology focuses on defining, analyzing, and synthesizing the characteristics of the operational variables through collaboration and dialogue with subordinate commanders, coordinating authorities, representatives from various staff disciplines, and the higher commander. Design emphasizes developing a holistic understanding of the operational environment and framing the problem. Based on this understanding, design continues by considering an operational approach for problem resolution and developing a design concept. The design concept consists of the problem statement, initial commander's intent, commander's planning guidance, and mission narrative. The staff uses the design concept as the foundation for more detailed planning, including course of action development and the production of orders using MDMP. Depending on the situation, commanders may conduct design before, in parallel with, or after MDMP.

6-9. The operational variables used to understand, analyze, and describe the operational environment consist of the following eight interrelated variables (known as PMESII-PT):

- Political.
- Military
- Economic.
- Social.
- Information.
- Infrastructure.
- Physical environment.
- Time.

6-10. Judge advocates support the design process by developing an understanding of the operational environment and collaborating with the commander and other staff sections to assist in framing the environment and the problem. Particularly important is the judge advocate's ability to identify legal issues that may assist in describing the context of the operational environment, those that must be addressed as part of the problem frame; and others possibly existing in the operational approach to reach the desired end state. (Design is discussed in more detail in FM 5-0.)

## **THE MILITARY DECISIONMAKING PROCESS**

6-11. The MDMP is a standardized, step-by-step planning methodology used primarily by staffs at battalion level and above. The MDMP is an adaptation of the Army's analytical approach to problem solving that applies across the spectrum of conflict. (FM 5-0 contains detailed information regarding the MDMP.)

6-12. The MDMP consists of seven steps:

- Step 1: Receipt of mission.
- Step 2: Mission analysis.
- Step 3: Course of action (COA) development.
- Step 4: COA analysis (war-gaming).
- Step 5: COA comparison.
- Step 6: COA approval.
- Step 7: Orders production.

## STEP 1: RECEIPT OF MISSION

6-13. As soon as a new mission is received, the unit's operations section issues a warning order to the staff alerting them of the pending planning process. Unit standard operating procedures identify who is to attend and where they should assemble. The staff (which includes the judge advocate) prepares for the mission by gathering the tools needed to do mission analysis. These tools include the following:

- Higher headquarters order with all annexes, appendixes, tabs, and exhibits.
- Map of the area of operations.
- Appropriate field manuals.
- Current running estimates (to include legal estimates).
- Any design products, including the design concept.

6-14. In addition, judge advocates should have the following:

- A copy of any existing rules of engagement (ROE) with any changes and any requests for changes.
- A copy of the relevant status-of-forces agreement or relevant local law in the anticipated area of operations.
- A copy of the legal appendix to the higher headquarters' order.
- The Operational Law Handbook; FM 27-10; and the *Law of War Documentary Supplement*.
- The Deployed Judge Advocate Resource DVD. [Note: This resource may be obtained by e-mail request to CLAMO@conus.army.mil.]

6-15. After receiving the mission, the staff and commander allocate time for planning, ensuring subordinates have time for their own planning. During the planning process, judge advocates ensure that they do not allow legal issues to unnecessarily impede the planning process. Commanders should not use the majority of their allotted planning time waiting for legal responses, nor should legal issues result in the commander's subordinate leaders losing their much-needed planning time. This requires judge advocates to identify and resolve legal issues quickly as they arise in the planning process.

## STEP 2: MISSION ANALYSIS

6-16. Mission analysis is integral to the MDMP. During mission analysis, the staff scrutinizes the mission and gathers information necessary for more detailed planning. As a part of mission analysis, the staff determines the availability of personnel and resources and identifies specified, implied, and mission-essential tasks.

6-17. Mission analysis is conducted in terms of factors of the area of operations that may impact the mission. (See FM 6-0 for details on mission analysis.) These factors, known as mission variables, include—

- Mission.
- Enemy.
- Terrain and weather.
- Troops and support available.
- Time available.
- Civil considerations.

6-18. The staff also outlines any constraints that could potentially affect the mission. Constraints are restrictive or limiting factors imposed upon operations. Judge advocates assess missions based upon situational awareness of the operational environment combined with their understanding of the commander's visualization. Within the MDMP, a judge advocate's ability to identify possible constraints is extremely important. Constraints could include such things as ROE provisions that preclude or limit the use of certain weapons systems, requirements based upon the presence of noncombatants in the area of operations, or external obligations such as host-nation laws or curfews that may affect operations. After identifying constraints, the judge advocate works with the other staff to devise legal, moral, and ethical solutions. These solutions lessen, mitigate, or eliminate the constraints and facilitate mission accomplishment.

### **STEP 3: COURSE OF ACTION DEVELOPMENT**

6-19. After receiving the commander's guidance and intent, the staff develops COAs for analysis and comparison. The commander involves the entire staff in COA development. Typically, the staff develops at least three different COAs for the commander to consider. The judge advocate identifies the relevant legal issues in each COA, brings them to the attention of the planning staff, and, if necessary, briefs the commander. Judge advocates carefully scrutinize each COA as it is being discussed and identify early any legal issues that may affect the feasibility of the COA. During COA development, judge advocates pay particular attention to the planned use of indirect fires and the presence of civilians and civilian objects. They should work with fire support personnel to ensure the COA includes control measures to help minimize collateral damage.

### **STEP 4: COURSE OF ACTION ANALYSIS (WAR-GAMING)**

6-20. COA analysis enables commanders and staffs to identify difficulties or coordination problems as well as probable consequences of planned actions for each COA being considered. It helps them think through the tentative plan. COA analysis is completed using a technique known as "war-gaming." War-gaming is a disciplined process with rules and steps designed to help the commander and staff visualize the flow of the battle or operation. The judge advocate should actively participate in the war-gaming process for several reasons. First, the judge advocate has unique training, expertise, and experience critical in a legally intensive area of operations. Second, many key legal issues first appear during the free-flowing discussion of the war game. Judge advocates begin working toward acceptable solutions to legal issues early in the process, before the plan is more fully developed. Finally, Army doctrine provides that the war game should be characterized by objectivity and a lack of emotional attachment to any one COA. Judge advocates' legal training enables them to assist in analyzing COAs and to offer sound practical input.

### **STEP 5: COURSE OF ACTION COMPARISON**

6-21. After the COAs are developed, the staff compares them. When necessary, judge advocates participate in the COA decision brief to the commander, outlining critical legal issues in each COA.

### **STEP 6: COURSE OF ACTION APPROVAL**

6-22. At the conclusion of the COA decision brief, the commander chooses a COA, provides the staff with guidance, and then directs them to develop the COA into a final plan.

### **STEP 7: ORDERS PRODUCTION**

6-23. Based on the commander's decision and final guidance, the staff refines the COA, completes the plan, and prepares an operation order. The operation order also includes a number of annexes and appendixes, including a ROE annex and a legal appendix. After it is produced, judge advocates read the entire order—along with annexes and appendixes—and scrutinize it carefully for legal sufficiency. Often issues discussed during the MDMP will be "added on" by other staff. If judge advocates identify additional legal issues after the base order is published, judge advocates address them in subsequent fragmentary orders.

6-24. Judge advocates and paralegals assigned to operational units are expected to participate in the MDMP. To be effective, they get involved in the process as early as possible. Early participation enables JAGC personnel to identify and resolve legal issues before they become "mission stoppers" and ensures that the plan is not built around premises or COAs that are not legally supportable.

6-25. Judge advocates are responsible for producing the ROE appendix to the operations annex and the legal support tab to the personnel services support appendix (See FM 5-0). Additionally, judge advocates often contribute to the production of the law and order operations, internment and resettlement operations, and targeting appendixes, but may assist or draft others as necessary given the situation.

## Chapter 7

# Rules of Engagement, Rules for the Use of Force, and Targeting

This chapter discusses rules of engagement, rules for the use of force, and targeting—three critically important areas for Judge Advocate General’s Corps Soldiers assigned to operational units. Because rules of engagement, rules for the use of force, and targeting are integral to the conduct of operations, judge advocates and paralegal Soldiers are prepared to offer input, insight, and expertise in these areas.

### OVERVIEW

7-1. Rules of engagement (ROE) are a critically important aspect of military operations overseas. *Rules of engagement* are 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 (JP 1-04). ROE contribute directly to mission accomplishment, enhance protection, and help ensure compliance with law and policy. While ROE are ultimately commanders’ rules to regulate the use of force, Judge Advocate General’s Corps (JAGC) personnel nonetheless remain involved in ROE drafting, dissemination, interpretation, and training.

7-2. ROE help commanders accomplish the mission by regulating the use of force in operations. ROE are implemented to help ensure that force is applied in a disciplined, principled manner that complies with law and policy and minimizes collateral damage while facilitating mission accomplishment.

7-3. ROE are driven by three primary sets of considerations: policy, legal, and operational. An example of a policy-based rule is Executive Order 11850. It prohibits first use of riot control agents and herbicides without Presidential approval (except in specific circumstances). An example of a legally based rule is the law of war provision regarding protected places. It states that hospitals, churches, and shrines will not be engaged except if they are used for military purposes. An example of an operationally based rule is the commonly encountered requirement for direct observation of indirect fires in populated areas.

7-4. Soldiers follow ROE when performing military operations overseas. Within the U.S. and its territories, Soldiers performing defense support of civil authorities missions or land-based homeland defense missions follow rules for the use of force (RUF) and not ROE.

### STANDING RULES OF ENGAGEMENT

7-5. The keystone document in the area of ROE and RUF is CJCSI 3121.01B. It provides the baseline ROE, known as the standing rules of engagement (SROE), for U.S. forces performing military operations outside U.S. territory and outside U.S. territorial seas. It also provides the baseline for the standing rules for the use of force (SRUF) for U.S. forces performing defense support of civil authorities missions within U.S. territory and U.S. territorial seas and land-based homeland defense within U.S. territory. The SROE establish fundamental policies and procedures governing the action U.S. commanders and their forces take during all military operations and contingencies and during functions assigned under U.S. law occurring outside U.S. territory. U.S. forces will always adhere to the SROE unless they are superseded by other ROE approved by the President or the Secretary of Defense.

7-6. The SROE portions of CJCSI 3121.01B are divided as follows:

- Enclosure A – SROE. This unclassified enclosure details the general purpose, intent, and scope of the SROE, emphasizing a commander’s right and obligation to use force in self-defense.

Critical principles are addressed as foundational elements of all ROE, such as unit, national, and collective self-defense; hostile act and intent; and the determination to declare forces hostile.

- Enclosures B through H. These classified enclosures provide general guidance on specific types of operations: maritime, air, land, space, information, and noncombatant evacuation operations, as well as counterdrug support operations outside U.S. territory.
- Enclosure I – Supplemental Measures. Supplemental measures found in this enclosure enable a commander to obtain or grant those additional authorities necessary to accomplish a mission.
- Enclosure J – ROE Process. This enclosure provides guidelines for incorporating ROE development into military planning processes. It introduces the ROE planning cell, which may be utilized during the development process.
- Enclosure K – ROE References.

7-7. The SROE contain technical definitions of self-defense: inherent right to self-defense, national self-defense, and collective self-defense. Unit commanders always retain the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. Unless otherwise directed by a unit commander, U.S. forces may exercise individual self-defense in response to a hostile act or a demonstration of hostile intent. When individuals are assigned and acting as part of a unit, individual self-defense should be considered a subset of unit self-defense. As such, unit commanders may limit individual self-defense by members of their unit. Both unit and individual self-defense includes defense of other U.S. military forces in the vicinity. National self-defense includes the defense of U.S. forces, and in certain circumstances, U.S. persons and their property, or U.S. commercial assets, from a hostile act or a demonstration of hostile intent. Collective self-defense includes the defense of designated nonmilitary forces, or designated foreign nationals and their property, from a hostile act or a demonstration of hostile intent. Only the President or Secretary of Defense may authorize collective self-defense.

## **RULES OF ENGAGEMENT DEVELOPMENT**

7-8. As the commander's subject matter expert on domestic and international law, the law of war, and the protection of noncombatants, the judge advocate helps the commander draft effective ROE. This can only be done when the judge advocate understands the commander's intent, the unit's capabilities and limitations, and the type of mission or operation that the unit will be performing. When developing ROE, judge advocates carefully study existing ROE and ensure that the rules they are creating nest with those promulgated by higher authorities. If the rules they seek to promulgate are not nested in higher authorities, judge advocates request and justify ROE modifications. Similarly, judge advocates work closely with subject matter experts from all relevant staff sections during ROE development.

7-9. ROE evolve with mission requirements and are tailored to mission realities. They are a flexible instrument designed to support the mission through various operational phases. Commanders and judge advocates are prepared to change or modify ROE in response to changing situations and new threats.

## **RULES OF ENGAGEMENT DRAFTING CONSIDERATIONS**

7-10. Operational requirements, policy, and law shape ROE. When drafting or supplementing ROE, the emphasis should remain on practical application. It does no good to draft ROE that are so complex that Soldiers cannot understand them or apply them when Soldiers are under pressure.

7-11. Normally ROE impose political, operational, and legal limitations on commanders. Withholding employment of particular classes of weapons or exempting the territory of certain nations from attack both illustrate such limitations. At the tactical level, ROE may extend to criteria for initiating engagements with certain weapons systems, or they may address reaction to attack. ROE always comply with domestic and international laws, including the law of war; however, they should never simply restate the law of war.

7-12. Effective ROE do not assign specific tasks or drive specific tactical solutions. Commanders at all levels continually review the ROE to ensure their effectiveness in light of current and projected conditions in their operational area.

## OPERATION-SPECIFIC VERSUS STANDING RULES OF ENGAGEMENT

7-13. Geographic combatant commanders routinely seek approval to supplement the SROE with ROE tailored to operations in their respective areas of responsibility. As such, most large-scale operations—such as Operation Enduring Freedom or Operation New Dawn—have their own operation-specific ROE. These ROE will routinely be based, in large measure, on the SROE; however, they will be tailored as necessary to help forces in the geographic combatant commanders' areas of responsibility more effectively accomplish their mission. Operation-specific ROE may include the authorization to engage and destroy a specific enemy force, or they may list specific approval authorities in the chain of command of the units operating in that area of responsibility who can approve certain actions.

## SPECIFIC RULES OF ENGAGEMENT PROVISIONS

7-14. Commanders sometimes insert specific rules into ROE that dictate precise terms or restrictions on the use of force. The following types of rules may be included in ROE:

- Hostility criteria.
- Escalation of force or challenging procedures.
- Protection of property and foreign nationals.
- Approval to use weapons systems.
- Observed indirect fires.
- Territorial or geographic constraints.
- Restrictions on point targets and means of warfare.
- Detention criteria.

7-15. Hostility criteria provide Soldiers a set of objective factors to assist in determining whether an individual's conduct constitutes a hostile act or a demonstration of hostile intent.

7-16. Rules for escalation of force or challenging procedures specify graduated measures of force that Soldiers may use, if warranted, in ambiguous situations before resorting to deadly force. Such measures could include giving a verbal warning, using physical force, or perhaps firing an aimed warning shot at a vehicle. Commanders ensure that Soldiers understand that escalation-of-force measures do not limit the inherent right of self-defense, nor do they restrict the use of deadly force when necessary to defend against a hostile act or a demonstration of hostile intent.

7-17. Rules for protection of property and foreign nationals detail what and who may be defended with force aside from the lives of Soldiers and citizens. They include measures that Soldiers can take to prevent crimes in progress or the fleeing of criminals.

7-18. Rules for approval to use weapons systems designate what level commander must approve use of particular weapons systems. Such rules may prohibit use of a weapon entirely.

7-19. Rules for observed indirect fires require that one or more persons or electronic means observe an indirect fire target.

7-20. Rules for territorial or geographic constraints create geographic areas into which forces may not fire. These rules may designate a territorial—perhaps political—boundary, beyond which forces may neither fire nor enter except perhaps in hot pursuit of an attacking force. They include control measures that coordinate fire and maneuver by means of graphic illustrations on operation plan map overlays.

7-21. Rules for restrictions on point targets and means of warfare prohibit targeting of certain individuals or facilities. Such facilities and individuals may include those found on a no-strike list or a restricted target list. These rules may restate basic rules of the law of war for situations in which a hostile force is identified and prolonged armed conflict ensues.

7-22. Rules for detention criteria designate what the applicable criteria are for detaining individuals, how they should be treated, and where they should be taken.

## **INTERPRET-DRAFT-DISSEMINATE-TRAIN METHODOLOGY**

7-23. Commanders and staffs at all echelons use the interpret-draft-disseminate-train (I-D-D-T) methodology to incorporate ROE into the conduct of military operations. Judge advocates participate in all four facets of this methodology. Each facet connects with and influences the others. Together the facets describe a process of continuous refinement and revision. The facets of the I-D-D-T methodology are interactive rather than sequential. In joint task force and higher echelons, a ROE planning cell performs the I-D-D-T methodology. The cell consists of the J-2, the J-3, the J-5, and a judge advocate, in addition to other special staff officers as appropriate. The J-3 is responsible for ROE in crisis action planning. The ROE planning cell provides a formal planning structure through which the J-3 can effectively perform this responsibility. At corps and divisions, the I-D-D-T methodology is used in the targeting process. At the brigade combat team (BCT) level, the brigade judge advocate coordinates throughout the military decisionmaking process with the S-3 and with all staff members engaged in targeting to ensure units follow the I-D-D-T methodology.

### **INTERPRET**

7-24. At operational and tactical levels of war, commanders and staffs interpret the ROE issued by higher headquarters. At the theater level, combatant commanders and their staffs interpret the SROE and any mission-specific ROE that the Chairman of the Joint Chiefs of Staff or the Secretary of Defense may issue. Interpretation of ROE demands skills that are well honed in the legal profession and specifically cultivated by attorneys. Thus, while commanders ultimately determine what a rule issued by higher headquarters demands of their commands, judge advocates provide expert assistance.

7-25. The interpretive expertise of judge advocates begins from a thorough familiarity with the SROE. It relies upon aggressive research to find all operation plans (OPLANs), operation orders (OPORDs), messages, standard operating procedures, treaties, coalition documents, directives, and regulations that purport to establish or change the ROE. It demands careful organization of these documents (chronologically by issuing headquarters) to determine which document is authoritative on which point. It requires skill at reconciling two rules that appear to contradict one another. Judge advocates do this by considering broader imperatives contained in the text of the rules or other guidance as well as by applying reasoning from available precedents as to how the contradictory rules have been interpreted in the past. It presumes detailed knowledge of the military operations and staff organization and procedures to gather information from those who can provide additional needed facts.

7-26. The judge advocate's contribution to the interpretation of ROE sometimes requires more than the skills of textual construction and factual analysis, however. In some situations, the judge advocate is the sole member of the ROE planning cell, the fires cell, or the staff who possesses the necessary law of war training to correctly interpret higher headquarters ROE in light of governing legal constraints. This interpretation requires constant situational awareness. Judge advocates gain this awareness through communication nodes, mobility, and the commander's task organization.

### **DRAFT**

7-27. In some operations, ROE are top-driven. In this case, a higher echelon commander—for instance a combatant commander—establishes ROE that are disseminated verbatim to all lower echelons. The preference of military doctrine, because it preserves lower echelon initiative, is for ROE to be top-fed. In these ROE, a higher echelon commander establishes rules for immediate subordinate echelons. These subordinate echelons in turn disseminate ROE that are consistent with those of higher headquarters but tailored to the particular subordinate unit's mission. These methods may also coexist within a particular operation, as some rules may be top-driven while others may be subject to discretion on the manner of dissemination and, thus, top-fed. When the rules are not top-driven, commanders and staffs from theater of operations to BCT level draft ROE for their commands.

7-28. At theater and joint task force levels, the drafting of ROE results in Appendix 11 (Rules of Engagement) to Annex C (Operations) of the OPLAN or OPORD. At corps, division, and BCT level, the drafting of ROE results in Appendix 12 to Annex C to the OPLAN or OPORD in accordance with Army doctrine. Army doctrine also calls for the integration of ROE in the coordinating instructions subparagraph



of paragraph 3 (Execution) of the body of the OPLAN or OPORD. Army doctrine provides minimal guidance as to the contents and format of these ROE documents. Standard operating procedures (SOPs), which exist in part to enable OPLANs or OPORDs to be brief, frequently provide extensive content and format guidance. This guidance in turn typically draws heavily upon the SROE, incorporating both standing rules and supplemental rules according to a command-specific format that is periodically updated and continuously trained. Appendix E to Enclosure B of the SROE contains a message format by which combatant commanders request and receive supplemental ROE.

7-29. The drafting of ROE in the context of multinational operations presents additional challenges. The SROE state that U.S. forces assigned to the operational control (OPCON) or tactical control (TACON) of a multinational force will follow the ROE of the multinational force if authorized by the Secretary of Defense. The SROE further state that apparent inconsistencies between the right of self-defense in the U.S. ROE and the ROE of the multinational force will be submitted through the U.S. chain of command for resolution. Until a resolution is made, the U.S. force will follow the U.S. ROE. When U.S. forces under United States' OPCON or TACON operate with a multinational force, reasonable efforts will be made to establish common ROE. If such ROE cannot be established, U.S. forces will operate under U.S. ROE.

7-30. Participation in multinational operations may be complicated by varying national obligations derived from international agreements. For example, other members in a coalition may not be parties to treaties that bind the United States, or they may be bound by treaties to which the United States is not a party. U.S. forces still remain bound by U.S. treaty obligations even if the other members in a coalition are not parties to a treaty and need not adhere to its terms. A multinational partner's domestic law, policy, and social values may also affect planning. Lessons learned from recent multinational exercises and operations reflect significant differences in how various countries understand and view the application of military force through ROE. Legal advisors in multinational headquarters assess the impact of specific national domestic laws and policies on ROE and operational ability. These factors can severely limit or expand a multinational force commander's ability to use a national contingent's capabilities. Legal advisors at all levels of planning assist in the interpretation and drafting of ROE. The United States places an importance on ROE that other nations may not share, attaches meaning to terms with which other nations' forces may not be familiar, and implements ROE within a context of doctrine that may differ markedly from that of other nations. When operating with forces from non-English-speaking countries, these differences are magnified. Energetic participation by judge advocates in the drafting process helps ensure that final ROE products reflect the legitimate interests of all sides. In such circumstances, U.S. forces benefit by having a completed draft (such as SROE) available as a basis for discussion. When developing ROE with the United Nations, diplomatic or policy constraints occasionally dictate language peculiar to United Nations operations. In these cases, the availability of a complete, preferred alternative (again, the SROE) gives U.S. forces a medium with which to communicate their concerns.

7-31. The sound drafting of ROE adheres to several principles:

- Consider METT-TC.
- Push upward on the drafting process.
- Avoid restating strategy and doctrine.
- Avoid restating the law of war.
- Avoid restating tactics.
- Avoid safety-related restrictions.
- Avoid excessively qualified language.

7-32. Judge advocates consider METT-TC. The mission will drive the ROE, and as an operation unfolds in phases, the mission may trigger significant shifts in the ROE. The existence of enemy forces or other threats may change the ROE from conduct-based rules to status-based rules with respect to those threats that have been declared hostile forces. The terrain will limit the feasibility of certain force options. The capabilities and level of training of friendly troops will determine whether certain ROE need to be spelled out in the OPORD. The presence or absence of civilians will inevitably raise questions about whom friendly forces can protect under ROE.

7-33. Judge advocates push upward on the drafting process. SROE provides the means to request supplemental ROE. If the METT-TC suggests a ROE that is not contained in the higher headquarters

annex, judge advocates forward a suggested rule up to the higher headquarters for approval, keeping in mind that the SROE are permissive. ROE should not be used as the means to set forth strategy or doctrine.

7-34. Judge advocates avoid restating the law of war. ROE should not simply restate the law of war. Commanders may desire to emphasize an aspect of the law of war that is particularly relevant to a specific operation. (See Desert Storm ROE regarding cultural property.) Commanders refrain from including an extensive discussion of The Hague Regulations and Geneva Conventions in ROE.

7-35. Judge advocates avoid restating tactics. Sometimes the purposes of ROE (political, legal, military) are difficult to discern. To alleviate this problem, a boundary line drawn upon an operations overlay results from a commander's concept of operations while simultaneously transmitting a rule of engagement stemming from political considerations. Still, many phase lines, control points, and other control measures have no meaningful connection to political or legal considerations. These measures belong in other portions of the OPLAN or OPORD, not in the ROE.

7-36. Judge advocates avoid safety-related restrictions. ROE should not address safety-related restrictions. Certain weapons require specific safety-related, pre-operation steps. These should not be detailed in the ROE but may appear in the tactical or field SOPs.

7-37. Judge advocates avoid excessively qualified language. ROE are useful and effective only when understood, remembered, and readily applied under stress. Well-formulated ROE anticipate the circumstances of an operation and provide unambiguous guidance to U.S. forces before confronting a threat.

## **DISSEMINATE**

7-38. The OPLAN or OPORD annex is only the minimum means of disseminating the ROE. The annex at each echelon will build upon the command's SOP, which is the primary, continuous means of disseminating those ROE that tend to appear in successive operations. Various methods effectively capture dissemination across a command. Commanders, S-3 or G-3 staff, and judge advocates develop procedures to disseminate changes quickly and efficiently in the ROE and train staffs and subordinate commanders accordingly. When particular ROE issued by higher headquarters are not anticipated in the tactical SOP, the OPORD annex should state these rules outright, without reference to a ROE menu item. Commanders and staffs also provide mission-specific ROE training for deploying Soldiers. While never a substitute for training, a ROE card often helps Soldiers at the lowest level as a ready reference and is issued to Soldiers in virtually every instance.

## **TRAIN**

7-39. ROE are disseminated throughout the force and reinforced by training and rehearsal. Judge advocates are prepared to assist in this training. Soldiers execute in the manner they train; they will carry out their tasks in compliance with the ROE when trained to do so. Since a single Soldier's action can change not only the tactical, but also the strategic and political setting, commanders and judge advocates must disseminate and train ROE to the lowest levels. All training opportunities should reinforce ROE and teach Soldiers how to apply the basic rules of self-defense. Individual and unit preparation for specific missions incorporate training that challenges Soldiers to apply mission-specific ROE. In crisis-response situations, ROE training may consist of leaders and Soldiers receiving and training on the mission-specific ROE en route to the departure airfield. In that case, the knowledge gained on the basic rules of self-defense and scenario-specific, situational ROE during past scheduled training enables commanders and Soldiers to better understand and adhere to the crisis ROE.

7-40. When preparing for stability operations, commanders plan for Soldiers to use greater constraint and discipline than in offensive or defensive operations. Situational training should challenge Soldiers in employing weapons, levels of force, and other ROE. Situational training focuses on one or a small group of tasks—within a particular mission scenario—and requires that Soldiers practice until they perform the tasks to standard. Trainers refer to these scenarios unofficially as “vignettes,” and to this type of training as “lane training.” To conduct situational training on ROE, a commander, judge advocate, or other trainer places Soldiers in a simulated scenario and then confronts them with an event, such as the crashing of a traffic checkpoint barrier by a speeding vehicle. The trainer evaluates the Soldier's response and afterward

discusses alternative responses available within ROE. Situational training brings to life abstract rules contained in written ROE, giving Soldiers concrete terms of reference within which to determine their responses. In this way, Soldiers achieve the balance between initiative and constraint that is so important to success, particularly in stability operations. Judge advocates prepare to provide ROE training, including vignette-driven training.

## **STANDING RULES FOR THE USE OF FORCE**

7-41. SRUF establish fundamental policies and procedures governing the actions U.S. commanders and their forces follow during all defense support of civil authorities operations and routine military department functions occurring in the United States and its territories. SRUF also apply to land homeland defense missions occurring within U.S. territory and to U.S. forces, civilians, and contractors performing law enforcement and security duties at all Department of Defense (DOD) installations. They also apply to duties off-installation while conducting official DOD security functions, within or outside U.S. territory, unless otherwise directed by the Secretary of Defense. Domestic policy concerns, host-nation laws, and international agreements may limit U.S. forces' means of completing their law enforcement or security duties in these environments.

7-42. The SRUF are located at Enclosures L through Q of CJCSI 3121.01B. Enclosure L sets out the basic self-defense posture under the SRUF. Enclosures M through O provide classified guidance on maritime operations within U.S. territory; land contingency and security-related operations within U.S. territory; and counterdrug support operations within U.S. territory. Enclosures P and Q provide a message process for RUF, as well as RUF references.

7-43. The SRUF apply to active duty and National Guard forces operating in a Title 10 status performing missions for homeland defense and defense support of civil authorities. The SRUF do not apply to National Guard forces operating in either state active duty or Title 32 status. In those two cases, the law of the states where the Army National Guard forces are operating governs the RUF.

7-44. Individual state laws vary in the National Guard's authority to use force. Depending on the language of the state statutes involved, these grants of or limitations on the National Guard's authority to act as peace officers may apply to National Guard personnel conducting operations in a Title 32 status, state active duty status, or both. Some states grant National Guard members (in a Title 32 or state active duty status, or both) the authority of peace officers, while others only authorize those powers enjoyed by the population at large, such as "citizen's" arrest. National Guard judge advocates should ensure that RUF are tailored to the mission as well as to the law and policies of the states in question.

## **TARGETING**

7-45. Judge advocates play a critically important role in targeting. As subject matter experts on the law of war, ROE, the protection of noncombatants, detainee operations, and fiscal and contract law, they provide commanders with essential input on plans, directives, and decisions related to lethal and nonlethal targeting. Judge advocates are part of lethal and nonlethal targeting cells or working groups and their input may be a major factor in decisions. Most commands require an operational law judge advocate to review all lethal targeting packets.

## **PREDEPLOYMENT**

7-46. The judge advocate's understanding of the targeting process and integration into the targeting cell should begin long before deployment. As a first step, judge advocates must understand their units' missions and capabilities. Next, they seek out information, training, and doctrine to understand the targeting process thoroughly. Finally, judge advocates understand and internalize how their unit staff conducts targeting. Without a sound working knowledge of these concepts, judge advocates cannot contribute fully to planning and targeting. Judge advocates need to understand the current methodology for estimating collateral damage. See FM 3-60 and CJCSI 3160.01A for more information.

7-47. The targeting process uses step-by-step procedures. First, the commander and staff decide what objects to target. Next, they determine the best tactic for locating and pinpointing the targets. Third, they

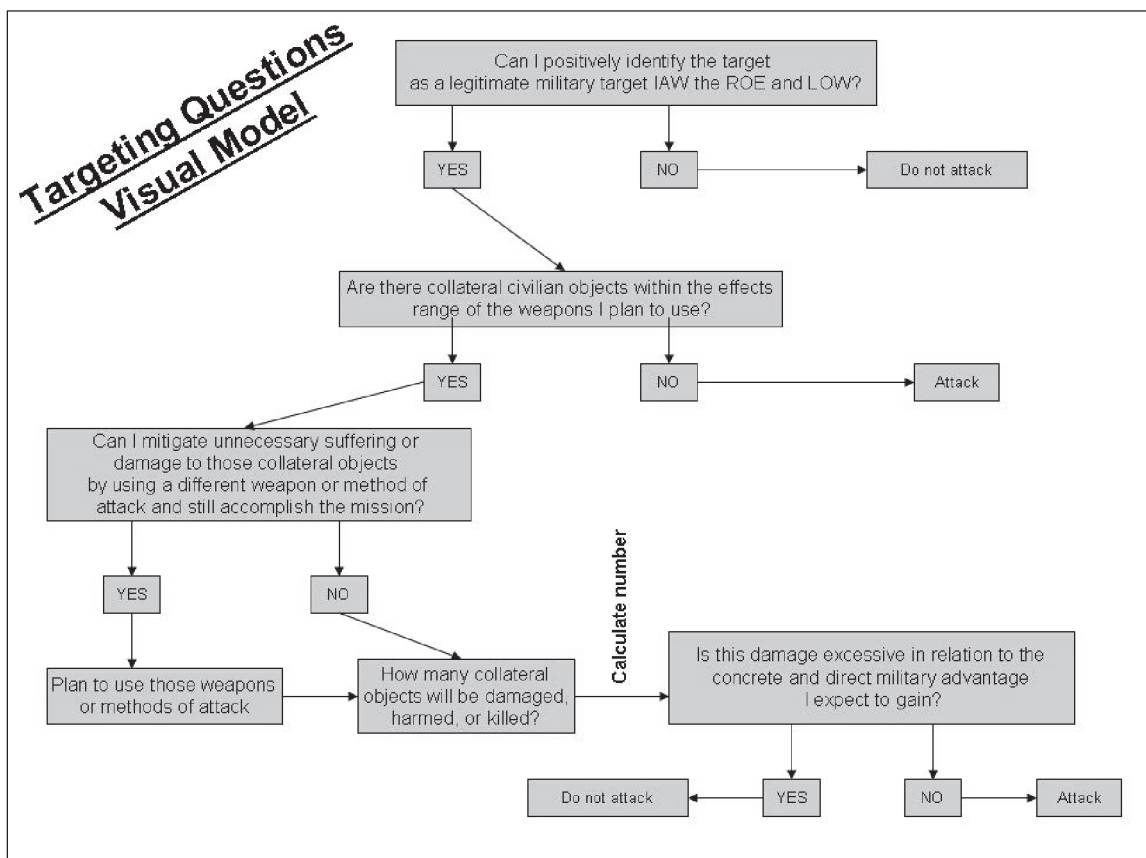
analyze the resources available and choose the best means for striking or affecting the target. Finally, they determine the most effective means to assess or measure the effects that the action has had on the target. This methodology is often referred to as decide, detect, deliver, and assess. FM 3-60 discusses each of these steps. A similar approach is used for nonlethal targets.

7-48. Judge advocates participate actively in planning from the moment an initial warning order notifies a unit of a potential contingency deployment. Participation in the planning and targeting development process enables judge advocates to prevent the inclusion of legally questionable actions into the OPLAN. Judge advocates attend all planning sessions, provide direct input into the decisionmaking processes, and introduce relevant legal considerations into the lethal and nonlethal targeting processes.

**DEPLOYMENT**

7-49. Once deployed, judge advocates are included in the lethal and nonlethal targeting cell so they are available to provide timely legal input on key targeting decisions. Typically, the brigade legal section cannot provide a full-time representative to the targeting cell. Accordingly, judge advocates may not be present when impromptu targeting meetings or huddles with the commander are called. Being fully integrated into the staff and the targeting cell is the key to mission success.

7-50. The rapid pace and changing nature of modern warfare, together with the expanded role of military lawyers in war planning, raises unprecedented issues for military lawyers. Several tools exist that judge advocates use to help them walk through the targeting process. The lethal targeting visual model in figure 7-1 may help judge advocates to assess lethal targeting decisions accurately and thoroughly.



**Figure 7-1. A sample targeting decision model**

## **NONLETHAL TARGETING**

7-51. Judge advocates participate as members of nonlethal targeting cells or working groups. The names of these groups may vary, but in general they focus on the application of assets, as opposed to lethal munitions, to achieve or set the conditions to achieve a desired outcome not resulting in the kinetic destruction of the target. Nonlethal targeting is applicable in all operations but is most prevalent during stability operations or the transition to stability operations.

7-52. By providing legal expertise on issues surrounding nonlethal targeting, judge advocates play a key role in the nonlethal targeting process. In some cases, judge advocates may find themselves in the lead of a working group categorized as supporting nonlethal targeting.

7-53. An example of judge advocate participation in nonlethal targeting at the division level provides a way this integration might work. The division plans cell develops division targets that correspond to the campaign plan and flow from the lines of effort. Because improving the rule of law among the populace is inherent in stability operations, the plans officer looks to the Office of the Staff Judge Advocate to build targets to accomplish the rule of law mission. The operational law attorney, or some other designated judge advocate, participates in targeting synchronization meetings to discuss and debate proposed targets. A judge advocate might also lead the rule of law operational planning team meetings in preparation for a weekly or bi-weekly targeting brief to the division commander. In this capacity, the judge advocate must be able to articulate attainable goals as they relate to the expenditure of assets to improve policing, the judiciary, and correctional capacity in the area of responsibility. In coordination with the other members of the working group or planning team, the judge advocate makes sure targets are realistic and meaningful and the method lawful so they directly contribute to rule of law improvement.

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## Chapter 8

# Detainee Operations

This chapter addresses the legal aspects of detainee operations. It outlines the basic rules for detainee treatment and the requirements for treating detained persons in accordance with the Geneva Conventions and other applicable international agreements.

### INTRODUCTION

8-1. U.S. forces will detain people during military operations. *Detainee* is a term used to refer to any person captured or otherwise detained by an armed force (JP 3-63). A detainee is classified, in accordance with U.S. policy (see DODD 2310.01E and JP 3-63) as an enemy combatant—either lawful or unlawful, an enemy prisoner of war (EPW), a retained personnel, or civilian internee. International law confers certain legal rights to detainees depending upon which status they hold.

8-2. Humane treatment of all detainees is mandatory regardless of their legal status under the Geneva Conventions or U.S. policy (such as DODD 2310.01E). Soldiers treat all detainees in accordance with applicable domestic and international law, national policy, and the law of war. When conducted properly, detainee operations set conditions for success by demonstrating the United States' genuine commitment to justice, human rights, fundamental fairness, and respect for all people. When detainees are abused or mistreated, it does significant damage to U.S. credibility, and encourages enemies to abuse and mistreat detained or captured U.S. and coalition personnel. Moreover, mistreatment of detainees by U.S. or host-nation personnel substantially undermines the legitimacy of U.S. forces and, if it occurs in the context of stability operations, the host-nation government. (See chapter 9 and chapter 10 for more information.)

8-3. The Army has Title 10 responsibility for detainee operations policy. Within the Army and through combatant commanders, military police may conduct internment and resettlement operations when conducting offensive, defensive, and stability or defense support of civil authorities operations. Internment and resettlement operations are part of the sustainment warfighting function.

### THE JUDGE ADVOCATE'S ROLE IN DETAINEE OPERATIONS

8-4. Judge advocates play a key role in each stage of detainee operations. Prior to deployment, they train Soldiers on the law of war and the legal aspects of detainee operations. During operations planning, they advise commanders and staffs on the legal aspects of detainee issues likely to occur on the battlefield. During the execution of operations, they help monitor the treatment of detainees and assist commanders to ensure that U.S. Soldiers are adhering to the applicable standards for detainee treatment. During stability operations, judge advocates help commanders develop and implement effective systems for ensuring the health, welfare, and ultimate disposition of detainees under U.S. control.

8-5. Judge advocates are trained on all aspects of detainee operations to include interrogation techniques and the proper standards of treatment for detainees during interrogation. This training enables judge advocates to recognize prohibited conduct and provide relevant advice to commanders and Soldiers on interrogations.

8-6. Judge advocates play an important role in training commanders and Soldiers on their responsibilities when performing detainee operations. They—

- Work with commanders to ensure that Soldiers are trained and that proper safeguards are in place to help prevent detainee abuse from the point of initial detention through the duration of time a detainee is under U.S. control.
- Advise commanders and other personnel responsible for detainee operations on all matters pertaining to compliance with applicable law and relevant national policy directives and regulations, such as AR 190-8 and FM 2-22.3.
- Provide legal advice on the proper composition and function of Article 5 tribunals to determine detainee status per Geneva Conventions.
- Advise the commander regarding investigations of suspected maltreatment, abuse of detainees, or other violations of applicable law or policy.
- Assist commanders with developing and implementing systems and procedures that address the ultimate disposition of persons detained under U.S. control.
- Coordinate with the provost marshal, supporting financial management unit, and other working groups and staff cells related to detainee operations.

8-7. Commanders ensure all Soldiers understand the basic rules of detainee treatment. Judge advocates assist commanders and train Soldiers, at a minimum, on these basic rules:

- Soldiers treat all detainees humanely and in accordance with U.S. law, policy, and the law of war.
- Soldiers, including interrogators, treat all detained persons consistent with the Geneva Conventions. The standards set forth in Common Article 3 are the minimum standards for care of detainees and apply to all detainees, regardless of status. The Geneva Conventions, however, require a higher standard of care for certain types of detainees such as EPWs.
- Soldiers bring detainees to secure areas as soon as practicable after capture. Soldiers immediately account for their possessions and personal property and log in possessions and property on DA Form 4137 (Evidence/Property Custody Document). Commanders ensure detainees are safeguarded from the effects of the environment (such as providing overhead cover).
- Soldiers complete DD Form 2745 (Enemy Prisoner of War [EPW] Capture Tag) for all detainees as close to the point of detention as possible. The capture tag serial number differs from the internment serial number. The commander of the detainee operations has responsibility for ensuring issuance of the internment serial number (see JP 3-63).
- Soldiers maintain and safeguard detainee records.
- Department of Defense (DOD) personnel may accept custody of a detainee from DOD personnel. Custody of a detainee cannot be accepted if the transfer of custody is from some person or entity not a part of DOD (such as another U.S. Government department or agency, or coalition forces) unless the transfer is conducted under applicable law and policy. (See DODD 2310.01E.)
- No detainee may be transferred from the custody of DOD unless the transfer is conducted under applicable law and policy. (See DODD 2310.01E.)
- If the command doubts a detainee's status, a competent authority will determine the detainee's status. An Article 5 tribunal convened pursuant to the Geneva Conventions may be required to make the determination.
- Those detainees who lack EPW status will have their detention reviewed periodically by competent authority. (See DODD 2310.01E.)
- Only trained, qualified interrogators may interrogate detainees. (See DODD 3115.09 and FM 2-22.3.)
- All Soldiers, regardless of rank or specialty, have a moral and legal duty to report detainee abuse.
- Interrogation is the systematic effort to procure information by direct questioning of a person under the control of the questioner. (See also FM 2-22.3). Commonly, this is thought of as questioning with the use of authorized intelligence questioning approaches. *Tactical questioning* is direct questioning by any Department of Defense personnel of a captured or detained person



to obtain time-sensitive tactical intelligence information, at or near the point of capture or detention and consistent with applicable law (JP 3-63). (See also DODD 3115.09.)

- Only trained, qualified interrogators may interrogate detainees. (See DODD 3115.09 and FM 2-22.3.)
- Soldiers are not authorized to “soften up” detainees or to “set the conditions for interrogations.” (See DODD 3115.09 and FM 2-22.3.)

## THE GENEVA CONVENTIONS

8-8. The four treaties comprising the Geneva Conventions are fully applicable as a matter of international law to all military operations that qualify as international armed conflicts involving signatory states. DOD policy applies the law of war, including the Geneva Conventions, during all armed conflicts, however such conflicts are characterized, and in all other military operations unless otherwise directed by competent authority. (See DODD 2311.01E.) At a minimum, the provisions of Common Article 3 to the Geneva Conventions apply in all non-international armed conflicts. Although often referred to collectively as the “Geneva Conventions,” there are four specific treaties:

- Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (GWS).
- Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea (GWS Sea).
- Geneva Convention (III) Relative to the Treatment of Prisoners of War (GPW).
- Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (GC).

8-9. GWS provides protection for members of the armed forces and other persons on the battlefield associated with the armed forces. These particular persons are no longer actively participating in hostilities as the result of becoming wounded or sick. This convention also regulates the conduct and treatment of medical and medical support personnel treating persons protected under the GWS and protected medical transportation. It mandates humane treatment for wounded and sick personnel who fall into enemy hands. It contains an express mandate that such individuals be protected against pillage and ill treatment and be provided necessary and adequate care.

8-10. GWS Sea mandates humane treatment and protection. This convention applies to members of the armed forces and other persons associated with the armed forces who are at sea and wounded, sick, or shipwrecked. It also protects medical and medical support personnel as well as medical transport including hospital ships.

8-11. GPW provides for the humane treatment of EPWs. It regulates the treatment of EPWs (care, food, clothing, medical care, and housing), discipline and punishment, labor and pay, external relations, representation, the international exchange of information, and the termination of captivity.

8-12. GC protects civilians who find themselves under the control of an enemy nation. It regulates the treatment of such civilians, to include establishing procedures governing the deprivation of liberty (arrest, internment, or assigned residence), and provides a legal framework for the relationship between civilians and the enemy authorities controlling them.

## DETAINEE CATEGORIES

8-13. In accordance with U.S. policy, a detainee falls within one of the following categories: enemy combatant—either lawful or unlawful, enemy prisoner of war, retained person, or civilian internee. The definition of detainee does not include persons being held primarily for law enforcement purposes, except where the United States is the occupying power.

8-14. In general, an *enemy combatant* is a person engaged in hostilities against the United States or its coalition partners during an armed conflict (DODD 2310.01E). The term *enemy combatant* includes both *lawful* enemy combatants and *unlawful* enemy combatants.

8-15. Lawful enemy combatants include members of the regular armed forces of a State engaged in hostilities against the United States. They include members of militia, volunteer corps, and organized

resistance movements belonging to a State party. This party engages in such hostilities (which are under responsible command), wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the laws of war. Lastly *lawful* enemy combatants include members of regular armed forces who profess allegiance to a government or an authority engaged in such hostilities but not recognized by the United States. Lawful combatants are afforded combatant immunity. (See DODD 2310.01E.)

8-16. Unlawful enemy combatants are persons not entitled to combatant immunity. These persons engage in acts against the United States or its coalition partners in violation of the laws and customs of war during an armed conflict.

8-17. An enemy prisoner of war is an individual or group of individuals detained by friendly forces in any operational environment who meet the criteria as listed in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War. (See FM 2-22.3.)

8-18. A retained person consists of enemy medical personnel, medical staff administrators, who are engaged in either the search for, collection, transport, or treatment of the wounded or sick, or the prevention of disease, and chaplains, retained with a view toward assisting enemy prisoners of war by providing medical care and religious ministrations. (See JP 3-63.)

8-19. A *civilian internee* is a civilian who is interned during armed conflict, occupation, or other military operation for security reasons, for protection, or because he or she committed an offense against the detaining power (DODD 2310.01E).

## **DETAINEE TREATMENT ACT OF 2005**

8-20. The Detainee Treatment Act of 2005 is found in Title 10. Judge advocates must be familiar with this statute and understand its application to U.S. forces and military operations. In summary, the act states—

- No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in FM 2-22.3.
- No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

## Chapter 9

# Stability Operations

This chapter discusses the specific tasks and responsibilities Judge Advocate General's Corps personnel have during stability operations. It also discusses legal considerations that Judge Advocate General's Corps personnel consider during stability operations.

### OVERVIEW

9-1. *Stability operations* is an overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief (JP 3-0). Army forces engaged in stability operations establish or restore basic civil functions and protect them until the host nation or other agency can capably provide these services. In a world characterized by persistent conflict driven by scarce resources and conflicting cultures, victory is likely to be measured not by military superiority but rather by the ability to provide for the essential needs and aspirations of a particular population. Stability operations are an essential component of any campaign seeking to successfully resolve conflict through prosperity rather than military conquest.

9-2. Stability operations leverage the coercive and constructive capabilities of the military force to establish a safe and secure environment; facilitate reconciliation among local or regional adversaries; establish political, legal, social, and economic institutions; and facilitate the transition of responsibility to a legitimate civil authority. Through stability operations, military forces help to set the conditions that enable the actions of the other instruments of national power to succeed in achieving the broad goals of conflict transformation. Providing security and control stabilizes the area of operations. These efforts then provide a foundation for transitioning to civilian control and, eventually, to the host nation. Stability operations are usually conducted to support a host-nation (HN) government. However, stability operations may also support the efforts of a transitional civil or military authority when no legitimate government exists. (FM 3-07 discusses stability operations in detail.)

9-3. Stability operations may be performed across the spectrum of conflict. Although all operations require a mixture of lethal and nonlethal action, stability operations emphasize nonlethal action while retaining a focus on initiative. Initiative is critical to stability operations because time is of the essence in establishing or restoring essential services to the population. The period during which a population is deprived of essential services provides a space for conflict and insurgency to grow. The primary source of essential services is the HN government. Stability operations are intended to provide the time necessary for the HN government to become established and capable of providing those services itself. The Army's strategic approach to stability operations emphasizes unity of effort, conflict transformation, legitimacy, rule of law, and capacity building.

9-4. Unity of effort requires that stability operations be conducted across the whole U.S. Government, integrating the capabilities of the military with civilian agencies (a "whole of government approach") as well as integrating U.S. Government efforts with those of international agencies, nongovernmental organizations, multinational partners, and private entities. Such integration is likely to raise substantial legal issues that Judge Advocate General's Corps (JAGC) personnel should be prepared to address.

9-5. The emphasis on conflict transformation recognizes that U.S. forces frequently conduct stability operations simultaneously with offensive and defensive operations. JAGC personnel must anticipate the role that stability operations have in conflict transformation and must plan for conflict transformation prior to deployment. There is likely to be little time once in the area of operations to engage in such planning

from the beginning. It is easier to adapt and adjust a plan to a new situation in the area of operations once the situation develops. JAGC personnel not only prepare for their own changing roles, but also as staff officers assist the commander in planning for these changes for the entire unit. JAGC personnel cannot clearly distinguish their support to stability operations from their support to other types of operations. Stability operations frequently play a major role in irregular warfare, in conditions that require a flexible approach to conducting a mix of stability, offensive, and defensive operations.

9-6. Legitimacy is a principle central to all stability operations. JAGC personnel are well versed in the relationship between legitimacy and operations, including combat operations. Law connects the government to the people. Judge advocates serve a central role in advising commanders or assisting civilian agencies and HN government entities; judge advocates clarify the role of legitimacy in the operation of government programs and stability operations. Inextricably tied to the concept of legitimacy is the role of the rule of law in areas subject to stability operations. Chapter 10 describes the rule of law in detail.

9-7. Capacity building focuses on developing HN institutions, building community participation, developing human resources, and strengthening managerial systems. While it is important to provide essential services to the HN population in the short term, the goal of U.S. forces is not to provide services but rather to help build HN institutions that can provide services. Many civilian government agencies and nongovernmental organizations specialize in capacity building, reinforcing the need for a comprehensive approach to stability operations.

## **ROLES OF JUDGE ADVOCATE GENERAL'S CORPS PERSONNEL**

9-8. Just as stability operations do not fundamentally differ from other types of operations, the roles of JAGC personnel in stability operations do not fundamentally differ from the roles they fill in the conduct of offensive and defensive operations. Rather than requiring a distinct set of skills and tasks, stability operations require a shift in emphasis among the various roles that JAGC personnel commonly fill in any operational environment. Some aspects of stability operations, though, call upon judge advocates to act not only as staff officers, but also as participants in the operational aspects of stability operations.

## **TRADITIONAL JUDGE ADVOCATE GENERAL'S CORPS TASKS**

9-9. Legitimacy touches upon every aspect of stability operations. JAGC personnel assist commanders in adopting policies that reflect the importance of legitimacy in the conduct of stability operations. The legal, ethical, and moral advice provided by judge advocates helps ensure all actions undertaken by U.S. forces comply with established notions of legitimacy, including the forms of international, U.S. domestic, and HN legal obligations and norms.

9-10. Similarly, stability operations frequently touch directly on the degree to which the rule of law operates in the host nation. As with regard to legitimacy, JAGC personnel have a major role to play in ensuring that the command's actions in a stability operation both comply with and encourage the development of the rule of law. Indeed, the two efforts cannot be separated; it is impossible for a command to encourage the development of the rule of law without itself complying with applicable law. Chapter 10 discusses rule of law in detail.

9-11. Judge advocates can further legitimacy and the rule of law in their role of advising the commander on rules of engagement (ROE). As it does with regard to all U.S. military operations, the law of war applies to stability operations, and judge advocates need to fill their normal role as advisors on the law of war. However, stability operations frequently require specific ROE that are more restrictive and detailed when compared to those for sustained combat operations. Moreover, to be legitimate, such ROE need to comply with both international and (depending on the type of stability operation) existing HN law. Judge advocates need to understand the local culture to assist the command in addressing the inherent tension of armed Soldiers operating amongst the local population.

9-12. In circumstances in which the HN government has failed or has been deposed, U.S. forces may be required to establish a transitional military authority to protect the HN population during the transition to a new, legitimate civil government. The governance of HN territory by U.S. forces is subject to many legal constraints, including international and domestic U.S. law and potentially even United Nations Security Council resolutions. Any judge advocate participating in the establishment of a transitional military

authority must conduct extensive legal research to determine the applicable law and limits on U.S. military authority to serve as a transitional government. (For more information on the role of transitional military authorities in stability operations, see FM 3-07.)

9-13. Because stability operations engage HN populations in constructive relationships, JAGC personnel prepare for an increase in the types of interactions they normally have with the HN population. These interactions may include handling claims under the Foreign Claims Act, making condolence or solatia payments, and establishing Foreign Claims Commissions. Maintaining good will is particularly important in stability operations. JAGC personnel increase good will by responding to the legal needs of the HN population. Moreover, because stability operations will frequently accompany an improving security situation, JAGC personnel should expect that the populace's demand for such attention will increase.

9-14. The conduct of stability operations also involves increasing interoperation with local, private, and HN institutions. JAGC personnel frequently support the stabilization efforts led by others, such as civil affairs or U.S. Government agencies. As that interoperation increases, JAGC personnel need to increase their awareness of HN law and contract with local institutions. Such contracts support U.S. forces and the conduct of tasks necessary to the conduct of the campaign. These include contracts with local construction firms for the reconstruction of infrastructure in the host nation. Moreover, types of assistance that frequently accompany stability operations are governed by specific funding restrictions as a matter of U.S. domestic law, and judge advocates examine projects for compliance with those restrictions. (Paragraphs 9-24 through 9-31 discuss those restrictions in more detail.)

9-15. Often during stability operations, the security environment will be such that other U.S. Government agencies, international organizations, and nongovernmental organizations will be active in the operational area. Such organizations provide invaluable assistance to a host nation's needs. Frequently, forces will conduct stability operations during a period of increasing security, and with that increasing security, the number of such organizations and their diffusion throughout the operational area will necessarily increase. As they do, JAGC personnel prepare to increase the work they do to interface with such organizations.

9-16. Modern stability operations involve many DOD civilians, as well as civilian personnel employed by government contractors. Again, as the security situation improves, the number and diffusion of these individuals throughout the operational area is likely to increase. In addition to the normal issues that arise from the presence of civilians engaged in stability operations with U.S. forces, the dynamic legal and security environment is likely to present additional challenges. The means of disciplining these persons differ from the means of disciplining uniformed personnel. In some circumstances, civilians accompanying the force may be subject to the Uniform Code of Military Justice or the Military Extraterritorial Jurisdiction Act as well as administrative action by the United States or contractor employers. However, JAGC personnel ensure commanders have effective oversight mechanisms to control these civilians in the sensitive area of operations in which stability operations normally occur. Coordination with the responsible contracting officer is essential when dealing with contractor personnel. DOD directives contain further policy and guidance pertaining to civilians accompanying U.S. forces during operations.

9-17. Stability operations aim to build HN capabilities. JAGC personnel may also be instrumental in reviewing capacity-building projects for compliance with both U.S. and HN law. For instance, JAGC personnel might determine the legality of certain reforms or the legal authority of nascent HN government agencies to carry out certain forms of reform or reconstruction.

### **SPECIFIC JUDGE ADVOCATE GENERAL'S CORPS TASKS**

9-18. Stability operations require a distinct set of primary stability tasks, some of which call upon the specialized knowledge that JAGC personnel possess. Especially within the tasks associated with the restoration of order and the operation of government, commanders may call upon JAGC personnel for their legal expertise in conducting stability operations. Chapter 3 of FM 3-07 details the primary stability tasks along with descriptions of the many subtasks. The primary stability tasks are—

- Establish civil security.
- Establish civil control.
- Restore essential services.

- Support to governance.
- Support to economic and infrastructure development.

9-19. Establishing civil security requires a comprehensive set of rules to govern the legitimate employment of HN security forces, rules that judge advocates may be called upon to help draft or implement.

9-20. Establishing civil control includes establishment of a criminal justice system, providing support to law enforcement and police reform, judicial reform, corrections reform, the development of property dispute resolution processes, and even to war crimes courts and tribunals. It also requires the establishment of public outreach so that the HN population can actually engage justice institutions.

9-21. Restoring essential services can require extensive contracting and negotiations, and even includes assistance to displaced persons, which must be handled in compliance with HN and international law.

9-22. Support to governance may involve legal expertise only tangentially related to the areas JAGC personnel traditionally practice in, such as election reform and anticorruption.

9-23. Support to economic and infrastructure development, like restoring essential services, will likely require close interaction between the military and civilian agencies not traditionally associated with military operations, especially the private sector. Moreover, security and the rule of law are both critical ingredients to economic development. JAGC personnel often play important roles in programs designed to bring about security sector reform. Chapter 6 of FM 3-07 provides important information on security sector reform.

## LEGAL CONSIDERATIONS

9-24. Stability operations affect many areas of the operational area, areas not traditionally associated with major combat operations. The conduct of stability operations requires close coordination among military, civilian, international, nongovernmental, and HN actors, raising important legal issues. Since stability operations aim to build HN capacity rather than simply to provide services, legal limits on the ability of U.S. forces to interact and train HN forces may be implicated.

## AUTHORITY TO ASSIST A FOREIGN GOVERNMENT

9-25. U.S. forces have limited authority to provide assistance to foreign governments. The Department of State is the designated lead agency of U.S. Government efforts to coordinate stabilization, security, transition, and reconstruction activities. The Army conducts stability operations in support of these activities. Such support promotes the broader U.S. Government effort to advance U.S. interests in two ways. First, it assists an existing government with internal challenges or helping establish a new social, economic, and political domestic order in the short term. Second, it assists in the long term by establishing conditions for a sustainable peace.

9-26. Congress specifically appropriates funds for foreign assistance. The United States Agency for International Development expends such funds under the legal authorities in Title 22, U.S. Code. Provisions of Title 10 authorize small amounts of money. These funds are appropriated annually for commanders to provide humanitarian relief, disaster relief, or civic assistance with military operations. These standing authorities are narrowly defined and generally require significant advance coordination within the DOD and the Department of State (DOS).

## AUTHORITY FOR FOREIGN INTERNAL DEFENSE

9-27. Without receiving a deployment or execution order from the President or Secretary of Defense, U.S. forces may be authorized to make only limited contributions during operations that involve foreign internal defense. If the Secretary of State requests and the Secretary of Defense approves, U.S. forces can participate in foreign internal defense. The request and approval go through standing statutory authorities in Title 22, U.S. Code. Title 22 contains the Foreign Assistance Act, the Arms Export Control Act, and other laws. It authorizes security assistance, developmental assistance and other forms of bilateral aid. The request and approval might also occur under various provisions in Title 10. Title 10 authorizes certain types of military-to-military contacts, exchanges, exercises, and limited forms of humanitarian and civic

assistance in coordination with the U.S. ambassador to the host nation. In such situations, U.S. forces work as administrative and technical personnel as part of the U.S. diplomatic mission pursuant to a status-of-forces agreement or pursuant to an exchange of letters with the host nation. This cooperation and assistance is limited to liaison, contacts, training, equipping, and providing defense articles and services. It does not include direct involvement in operations. Assistance to foreign police forces by U.S. forces is permitted but not with the DOD as the lead government department.

### **GENERAL PROHIBITION ON ASSISTANCE TO POLICE**

9-28. Usually, the DOD is not the lead government department for assisting foreign governments. The DOS is the lead when U.S. forces provide security assistance—military training, equipment, and defense articles and services—to HN military forces. The Foreign Assistance Act specifically prohibits assistance to foreign police forces except within specific exceptions and under a Presidential directive. When providing assistance to training, the DOS's Bureau of International Narcotics and Law Enforcement Affairs provides the lead role in police assistance. The President, however, may delegate this role to other agencies. For example, in 2004, President George W. Bush signed a decision directive granting the commander, United States Central Command, authority to train and equip Iraqi police.

### **TRAINING AND EQUIPPING FOREIGN FORCES**

9-29. All training and equipping of foreign security forces is specifically authorized. U.S. laws require Congress to authorize expenditures for training and equipping foreign forces. The laws of the United States also require the DOS to verify that the host nation receiving the assistance is not in violation of human rights. Usually, DOD involvement is limited to a precise level of man hours and materiel requested from the DOS under the Foreign Assistance Act. The President may authorize deployed U.S. forces to train or advise HN security forces as part of the mission. In this case, DOD personnel, operations, and maintenance appropriations provide an incidental benefit to those security forces. All other weapons, training, equipment, logistic support, supplies, and services provided to foreign forces are paid for with funds appropriated by Congress for that purpose. Moreover, the President gives specific authority to the DOD for its role in such "train and equip" efforts. Absent such a directive, DOD lacks authority to take the lead in assisting a host nation to train and equip its security forces.

### **GENERALLY APPLICABLE FUNDING CONSTRAINTS**

9-30. In stability operations, like all operations, commanders require specific authority to expend funds. Normally, that authority is found in the DOD Appropriations Act, specifically, operation and maintenance funds. Congress may appropriate additional funds to commanders for the specific purpose of conducting stability and counterinsurgency operations. Examples of these appropriations from Operation Iraqi Freedom and Operation Enduring Freedom include the Commander's Emergency Response Program, the Iraq Relief and Reconstruction Fund, Iraq Freedom Fund, and Commander's Humanitarian Relief and Reconstruction Program funds.

### **HUMAN RIGHTS VETTING**

9-31. Congress typically limits when it will fund training or equipment for foreign security forces. If the DOS has credible information that the foreign security force unit identified to receive the training or equipment has committed a gross violation of human rights, Congress prohibits funding. Such prohibitions impose a requirement upon DOS and DOD. These departments vet the proposed recipient units against a database of credible reports of human rights violations.

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## Chapter 10

# Rule of Law

This chapter provides judge advocates with general information about rule of law activities. It describes some distinctive tasks that legal personnel supporting rule of law activities may be called upon to perform. It also discusses considerations in rule of law activities and personnel augmentation.

### RULE OF LAW ACTIVITIES

10-1. Rule of law activities involve subordinate tasks that support the five primary stability tasks of stability operations. The primary stability tasks are fundamental to decisive action and are conducted across the spectrum of conflict. As subordinate tasks in support of stability operations, rule of law activities may be executed to support a legitimate host-nation government, to assist a fragile state, or in the absence of a functioning civil authority. These activities often entail a wide variety of issues inherently legal or framed by the practice of law. Paramount to success is the coordination amongst units, agencies, and other organizations involved in the planning and execution of rule of law activities. *Rule of law* is a principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with international human rights principles (FM 3-07).

10-2. Many rule of law activities will occur as components of stability operations helping to establish (or reestablish) the host nation's capacity to maintain the rule of law. Stability operations are a core U.S. military mission; establishing the rule of law in the host nation is often critical to the success of all five primary stability operations tasks discussed in FM 3-07. Rule of law activities support establishing a safe and secure environment by developing, reforming, or enhancing the capacity of the host nation's security institutions and thereby providing security the civilian population views as legitimate.

10-3. Rule of law activities are likely to be part of an interagency effort. Rule of law activities will rarely, if ever, be exclusively a military or a U.S. Government responsibility. The Department of State (DOS) is charged with leading and coordinating U.S. Government efforts to conduct reconstruction and stabilization operations, including operations to establish and support the rule of law. The primary U.S. interagency partners with the DOS for these efforts are the U.S. Agency for International Development and the Department of Justice. Normally, DOS coordination falls to a country team under the direction of the U.S. ambassador to the host nation. Any rule of law activities undertaken at the tactical (local) level should be coordinated with the rule of law country team.

10-4. Experience indicates that while the DOS is charged to lead and coordinate with respect to rule of law, the Army, and judge advocates in particular, are actively engaged in preparing, planning, and conducting rule of law activities. Lessons learned and collected by the Center for Law and Military Operations demonstrate that responsibility for these activities continually falls to judge advocates at various levels of command. Judge advocates should expect to be significantly engaged in rule of law activities involving law enforcement, judicial systems and processes, and corrections. These specific activities of the rule of law, often referred to as "courts, cops, and corrections," should be areas of focus for judge advocates based upon Judge Advocate General's Corps (JAGC) core competencies and training.

10-5. The JAGC recognizes this and acknowledges that preparing, planning, and executing rule of law activities is a mission that judge advocates are prepared to conduct. This acknowledgment also recognizes that conducting rule of law activities in a semi or non-permissive area of operations, where freedom of maneuver is constrained due to security concerns, is often most easily executed or coordinated by judge advocates belonging to the unit responsible for that area of operations.

10-6. Judge advocates will train, prepare, and plan in anticipation of conducting rule of law activities in support of operations. While the categories of activities supporting rule of law are broad, judge advocates should focus their efforts towards those activities involving law enforcement, judicial systems and processes, and corrections. These activities include, but are not limited to, preparing, planning, and coordinating rule of law activities involving the judiciary, judicial process, practice of law, law enforcement, and prisons. Often judge advocates are involved in rule of law activities that relate to other aspects of operations at the tactical and operational level such as detainee operations, interrogations, and exploiting intelligence.

10-7. Although many major rule of law programs will occur as part of stability operations, rule of law activities occur across the spectrum of conflict. A special relationship exists between the rule of law and the legitimate exercise of force. As a result, rule of law activities not only include formal projects to rebuild host-nation (HN) capacity, but also actions to ensure U.S., multinational, and HN security forces operate to encourage respect for the rule of law while engaged in all operations.

10-8. The rule of law limits the power of government by setting rules and procedures that prohibit accumulating autocratic or oligarchic power. It dictates government conduct according to prescribed and publicly recognized regulations while protecting the rights of all members of society. It also provides a way to resolve disputes nonviolently and an integral method to establish enduring peace and stability. Generally, rule of law exists when—

- The state monopolizes the use of force in resolving disputes.
- Individuals are secure in their persons and property.
- The state is bound by law and does not act arbitrarily.
- The law can be readily determined and is stable enough to allow individuals to plan their affairs.
- Individuals have meaningful access to an effective and impartial legal system.
- The state protects human rights and fundamental freedoms.
- Individuals rely on the existence of legal institutions and the content of law in the conduct of their daily lives.

10-9. Rule of law activities are broad categories of actions designed to support HN development of institutional capacity, human capacity, functional effectiveness, and popular acceptance of the host nation's legal system and related government areas. The activities help create the rule of law conditions listed in paragraph 10-8. The phase of operations determines which rule of law activities are appropriate. Often rule of law activities undertaken in the wake of major combat operations are limited to enhancing security; as the operational area becomes more mature and secure, rule of law activities will move beyond questions of security to focus on law as a means to broader stability objectives. In other cases, rule of law activities beyond security occur simultaneously with major combat operations.

10-10. Rule of law activities relate to both U.S. and HN policies. Such policies are established by higher headquarters or civilian agencies in both the U.S. and HN governments. In addition, the Department of State will likely have a rule of law plan even in environments in which its civilian employees are not operating. Judge advocates continually look to such outside authorities and resources for guidance in the conduct of rule of law activities. Because they are closely related to policy, even local rule of law activities remain part of a single, nationwide rule of law plan. For example, a local effort to vet and appoint judges to quickly reestablish the court system could easily work counter to a system in which judicial appointments are carried out nationwide by a central authority.

10-11. Given their close relationship to policy, rule of law activities are likely to be particularly sensitive to the civilian population. They should be planned and executed while taking careful account of the populace's response. The essence of the rule of law is legitimacy, and rule of law activities undertaken without regard to local political sensitivities are likely to be counterproductive. Rule of law activities are intended to build HN capabilities and therefore should always be undertaken with HN legal institutions and with a view toward increasing their capabilities and legitimacy.

## CONSIDERATIONS IN RULE OF LAW ACTIVITIES

10-12. Judge advocates fall under the statutory technical supervision of The Judge Advocate General and are the only persons within the Army authorized to provide legal advice to commanders. With respect to rule of law activities, legal interpretation is often required to provide legal advice to commanders on the planning or execution of such activities. In cases involving the provision of legal advice to commanders or Soldiers conducting activities involving the practice of law, judge advocates must provide the legal advice that governs these individuals' activities. When Department of State personnel perform rule of law activities, they follow the guidance given to them from their supervisory chain.

10-13. Rule of law activities involving the practice of law include, but are not limited to—

- Evaluating and assisting in developing transitional decrees, codes, ordinances, courts, and other measures intended to bring immediate order to areas in which the HN legal system is impaired or nonfunctioning.
- Evaluating HN law, legal traditions, and administrative procedures in light of international legal obligations and human rights standards and, when necessary, providing appropriate assistance to their reform.
- Evaluating training given to HN judges, prosecutors, defense counsel, legal advisors, court administrators, and police and corrections officials in light of international legal obligations and human rights standards.
- When necessary, serving as legal advisors for transitional courts.
- Advising commanders and others on the application of international, U.S. domestic, and HN law considered in restoring and enhancing rule of law in the host nation.
- Advising commanders and U.S., international, and HN authorities on the legality, legitimacy, and effectiveness of the HN legal system including its government's compliance with international legal obligations and domestic law.
- Supporting the training of U.S. personnel in the HN legal system and traditions.

10-14. Judge advocates engaging in rule of law activities should consult current civil affairs doctrine for additional guidance (see FM 3-57), and the current *Rule of Law Handbook*, as well as lessons learned gathered by the Center for Law and Military Operations.

10-15. To be effective, the Department of State, civil affairs personnel, and judge advocates coordinate their rule of law efforts. Regardless of the operational environment and the level of involvement of the various interagency partners and the Army in conducting rule of law activities, all parties, to include HN authorities, achieve unity of effort through coordination and synchronization.

10-16. U.S. forces reflect the rule of law in their actions, including compliance with applicable domestic and international law. The civilian population as well as the international community will scrutinize military compliance with the rule of law in the conduct of operations. Thus, judge advocates normally undertake a role to ensure commanders understand and enforce U.S. compliance with legal obligations in the conduct of military operations.

10-17. Rule of law planners should utilize established frameworks for assessing HN legal institutions and measuring the progress of rule of law activities. Generic rule of law assessment and metrics frameworks, which are tailored to specific circumstances, are available from the Department of State. In many cases, judge advocates will have frameworks already tailored to specific HN legal systems. They should rely on those frameworks when planning rule of law activities.

10-18. Rule of law activities are necessarily highly contingent on the operational environment. The appropriate course of conduct for a rule of law activity depends on—

- How well the HN legal system supports the relationship between the populace and the HN government.
- The ability of the HN government to function as it supports the cultural, religious, and social norms.
- Ethnic, religious, political, or social divisions among the populace.
- Campaign objectives.

- The nature of the legal authority for U.S. action.
- The degree to which U.S. civilian agencies are present in the area of operations and active in the rule of law effort.

10-19. Because rule of law activities rely so highly on the operational environment, they are not amenable to checklist solutions. Judge advocates need to adapt even established frameworks to be useful when assessing the operational environment.

10-20. Prior to deployment, judge advocates should formulate basic, flexible rule of law plans. Once deployed, information and time will likely be in short supply. Judge advocates need to maximize both when preparing to commence rule of law activities.

10-21. Rule of law activities require continuity. Judge advocates deploying to replace a force already in the operational area rely on their predecessors for information regarding the operational environment. This information can detail the host nation, its legal system, existing rule of law activities, lessons learned, and opportunities identified for future rule of law activities. Even judge advocates serving as part of an entering force familiarize themselves with basic information about the host nation and its legal system.

10-22. Judge advocates cannot know everything about a host nation's legal system prior to engaging in rule of law activities. However, judge advocates should acquire the following as an essential part of the overall intelligence preparation of the battlefield:

- Knowledge, understanding of, and respect for the existing HN legal system and its international legal obligations.
- Knowledge of the conditions, capabilities, and locations of HN legal institutions (with emphasis on security-related legal institutions).

10-23. Planning factors affecting rule of law activities may include but are not limited to:

- The need to restore a legitimate, basic security apparatus as quickly as possible. A short window of opportunity exists to perform this task. Sometimes commanders refer to it as the golden hour following combat. During this golden hour, commanders and judge advocates concentrate their efforts on the basics and expand capability, capacity, and goals.
- The ability to secure and protect key infrastructure—courthouses, police stations, public records facilities, and prisons. Doing this as soon as possible minimizes the damage to those institutions and helps expedient reconstruction.
- Information from HN attorneys, judges, law enforcement personnel, corrections officers, administrative personnel, and others with understanding as to how the HN legal process and their institutions functioned previously.
- Information on the strengths and weaknesses of existing systems, including information from political specialists, sociologists, and anthropologists, as well as specialists on transnational crime.
- Information on how the country team organized its rule of law mission and objectives. This information allows judge advocates to coordinate with the country team and others engaged in or leading rule of law activities in the host nation.
- Unit staffing and Soldier support to plan and execute rule of law activities.

10-24. Judge advocates at a variety of levels of command will execute rule of law activities based on a number of factors after assessment of the operational environment. Some of the activities judge advocates should be prepared to execute include:

- Planning, coordinating, and synchronizing rule of law activities with interagency, HN, multinational, DOD, and superior, subordinate, and parallel Army organizations. The importance of planning and synchronizing rule of law efforts is paramount to success.
- Leader engagements with members of the judiciary, legal practitioners, law enforcement, and corrections officials.
- Developing measures of effectiveness (MOE) and measures of performance (MOP) to assess the adequacy of rule of law activities planning and execution. For more on MOE and MOP see FM 5-0.

- Developing and improving capacity amongst systems and processes in support of law enforcement, judicial systems and processes, and corrections. For example, developing criminal investigation laboratories, developing capacity to utilize scientific evidence such as fingerprints and DNA in trials, and introducing reform to the HN criminal code.
- Judicial conferences with HN judges addressing areas of the law or judicial process determined as focus areas through assessment and with HN judges' input.
- Attorney conferences with HN practitioners addressing identified issues to improve the delivery of legal services.
- Training local law enforcement personnel on human rights responsibilities.

10-25. Current operations demonstrate the value of translators and HN attorneys in support of rule of law activities. If possible, translators should understand legal terminology and the legal concepts of the host nation. Additionally, HN attorneys provide knowledge and experience of the actual practice of law and the unique nuances of the host nation legal system. This experience greatly assists judge advocates and others involved with planning and executing rule of law activities.

10-26. No single body of law regulates the conduct of rule of law activities. Numerous bodies of law are relevant: international law, including the law of war, human rights law, refugee law, and HN and U.S. domestic law. Several sources of reference material are available to the rule of law practitioner. (See *Rule of Law Handbook*, FM 3-24, and FM 3-07.)

10-27. U.S. forces remain aware of the international legal obligations of the host nation, including its international human rights obligations. For example, the host nation may be party to the International Covenant on Civil and Political Rights. If not, customary international law, which is reflected in the Universal Declaration of Human Rights, still binds the host nation. HN compliance with its international legal obligations should be the goal. Failing to respect human rights often undermines HN legitimacy, weakens the international community's commitment to the HN government, and it may restrict the ability of multinational forces to cooperate with HN authorities.

## PERSONNEL AUGMENTATION

10-28. The requirement for judge advocate augmentation to support rule of law activities is dictated by the situation in the operational environment. An assessment of the scope of rule of law activities in a unit's area of responsibility should be made prior to deployment or prior to assuming responsibility for rule of law activities. Judge advocates should make this assessment with other staff elements in the supported command. Factors to consider in requesting augmentation include, but are not limited to, the current types of rule of law activities in the unit's area of responsibility, the permissiveness of the operational environment, the amount and type of interagency rule of law support, assessment of HN legal institutions, organic judge advocate responsibilities and capability to perform rule of law activities.

10-29. Prior to deployment, staff judge advocates or brigade judge advocates of units that will control an area of operations (particularly where the interagency has not taken the lead or have a substantial rule of law presence) should request augmentation from the U.S. Army Reserve Legal Command for operational law teams of rule of law specialists. Where there is an interagency presence, staff judge advocates or brigade judge advocates should still consider requesting augmentation of U.S. Army Reserve Legal Command teams and optimize use of team capacity throughout supported brigades and the Office of the Staff Judge Advocate.

10-30. Sources for judge advocate augmentation include individual personnel augmentees, Legal Operations Team-General (LOT-G), and Legal Operations Team-Special (LOT-S) from the U.S. Army Reserve Legal Command. For more information on the LOT-G and LOT-S see appendix A.

10-31. Judge advocate augmentation whether individuals or teams will usually work for the Office of the Staff Judge Advocate or brigade judge advocate of the unit supported. This relationship is required to preserve and respect the professional working relationship between the staff judge advocate or brigade judge advocate and the supported commander. In unique instances where augmentees work decentralized, a supervisory-support relationship will exist with the Office of the Staff Judge Advocate or brigade legal section of the unit responsible for the area of operations.

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## Chapter 11

# Civil Affairs Units

This chapter addresses the roles and responsibilities of judge advocates assigned to civil affairs units. This chapter also highlights legal issues unique to civil affairs missions.

### OVERVIEW

11-1. The operational environment is characterized by both military and civil components. In modern operations, the relationship between diplomats, civilian agencies, and military organizations continues to grow in relevance. Civil affairs (CA) organizations play a critical role in these relationships.

11-2. CA units are organized, trained, and equipped to support missions requiring extensive interaction between military forces and indigenous populations and institutions, intergovernmental organizations, and nongovernmental organizations. CA personnel assist commanders in planning and executing stability operations and other initiatives involving civil-military interface that are designed to develop the capacity of friendly governments to care for and govern populations effectively. These operations and initiatives help to effectively deny sanctuary for insurgents and terrorists, diminish the underlying conditions for conflict and crisis, and set conditions for follow-on stability operations and reconstruction.

11-3. The modular force structure includes Regular Army, reserve CA brigades and reserve CA commands. CA brigades and commands are supported by a brigade judge advocate or command judge advocate (CJA), respectively, (brigade judge advocates and CJAs will be referred to collectively as CJAs for purposes of this chapter only), and a paralegal noncommissioned officer. In addition to the CJA and paralegal positions, CA commands also have judge advocate billets in some of their “functional specialty teams.” These exist in each of the CA commands, designated as rule of law teams and governance teams, with a number of both types in each command.

11-4. Each CA brigade also has one CJA and one rule of law judge advocate. Each CA battalion has a judge advocate who is designated as the international legal officer. The Civil Affairs Command rule of law teams often operate at the strategic level, working with the force in charge of a mission, or with the Department of State, but may also serve with units deployed to the field and supporting rule of law operations. CA judge advocates working as rule of law officers at the CA brigades serve at the operational level.

11-5. The authority to provide legal advice rests solely with judge advocates and civilian attorneys under The Judge Advocate General’s supervision. Judge advocates provide legal advice to commands; other attorneys, regardless of branch or unit of assignment, may not provide legal services.

11-6. Rule of law is one of the six core competencies of CA. That mission is often performed by judge advocates assigned to CA battalions, brigades and civil affairs commands and their paralegals. Non-judge advocates who are CA branch qualified officers and enlisted Soldiers with a legal or law enforcement background can and do work on rule of law teams providing assistance in the development of rule of law operations in a commander’s area of operation.

### DUTIES AND RESPONSIBILITIES

11-7. Judge advocates serving as CJAs for CA units perform the same duties as other command legal advisors. They serve as the primary legal advisors to their respective unit commanders and serve as a member of the commander’s personal and special staff. CJAs provide mission-essential legal services to the units they support, providing or coordinating for support and services across the six core legal disciplines: military justice, international and operational law, administrative and civil law, contract and fiscal law,

claims, and legal assistance. Given the high demand for CA personnel in current operations, CJAs assigned to CA units are well versed in preventive law and Soldier readiness processing. They are also prepared to provide predeployment training to CA forces. This training should include: law of war, human rights violations and reporting requirements, rules of engagement, military justice, legal assistance, and, if applicable, pertinent information concerning status-of-forces agreements.

11-8. In a deployed environment, the CJA provides the commander with expertise and insight on the legal aspects of civil affairs operations. This may include supporting activities designed to rebuild, reform, or assist in the administration of the judicial sector of a host nation. Judge advocates assigned to CA functional specialty teams provide legal expertise to commanders. Within each functional specialty area, technically qualified and experienced individuals, known as CA functional specialists, also advise and assist the commander and may assist or direct their civilian counterparts at the operational and strategic levels. For more information on CA functional specialty teams and CA organizations, see FM 3-57.

11-9. In virtually all cases, CA units are task organized to other commands. These commands will routinely have organic legal support. While not working directly for the staff judge advocate (SJA) of the supported command, the CJA still coordinates with the SJA for legal oversight, technical guidance, and information sharing purposes. (See chapter 4.) In the event that the other commands create rule of law teams, the SJA and the CJA facilitate bringing the CA judge advocates responsible for supporting rule of law operations into the existing rule of law operations structure. Effective communications between the CJA and the SJA is critical as it ensures that both individuals maintain situational understanding and ultimately provide synchronized and mutually supporting legal support in an often dynamic operational environment.

11-10. CJAs assigned to CA units are responsible for providing accurate legal advice to the commanders and staffs of CA units and CA-based joint task forces, and to the members of the functional specialty teams as they carry out their missions. Due to the nature of the CA mission, judge advocates assigned to CA units will need to be particularly competent in issues of fiscal law, humanitarian assistance, security assistance, and host-nation support.

## **CIVIL AFFAIRS OPERATIONS**

11-11. *Civil affairs operations* are those military operations conducted by civil affairs forces that (1) enhance the relationship between military forces and civil authorities in localities where military forces are present; (2) require coordination with other interagency organizations, intergovernmental organizations, nongovernmental organizations, indigenous populations and institutions, and the private sector; and (3) involve application of functional specialty skills that normally are the responsibility of civil government to enhance the conduct of civil-military operations (JP 3-57). CA forces plan, support, execute, or transition these military operations to modify behaviors, mitigate, or defeat threats to civil society, and assist in establishing the capacity for deterring or defeating future civil threats in support of U.S. objectives. Forces conduct these operations through, with, or by the indigenous population and institutions, intergovernmental organizations, nongovernmental organizations, or other government agencies. The five core tasks of CA operations are:

- Support to civil administration.
- Populace and resources control.
- Foreign humanitarian assistance.
- Nation assistance.
- Civil information management.

11-12. CA operations contain a number of unique legal and cultural issues. The following list outlines many of the major duties and responsibilities of CJAs supporting CA operations:

- Assisting in the preparation and reviewing of CA plans for consistency with the law as well as any strategic and operational planning.
- Preparing the legal section of the CA area study and assessment.
- Providing predeployment CA training as required.



- Providing guidance on—
  - Population control measures.
  - Targeting to minimize unnecessary collateral damage or injury to the civilian population.
  - Treatment of dislocated civilians, civilian internees, and detainees.
  - Requests for political asylum and refuge.
  - Acquisition of private and public property for military purposes.
  - Military information support operations and their effects on the civilian populace.
- Providing advice on and disposing of claims submitted by local civilians.
- Providing advice on the jurisdiction of local courts over U.S. military personnel and activities.
- Providing advice on humanitarian and civic assistance issues.
- Providing advice on disaster relief.
- Assisting in the creation and supervision of military tribunals and other activities for the proper administration of civil law and order.
- Assisting civil administration activities, including—
  - The establishment and operation of local judicial and administrative agencies.
  - The closing and reopening of local courts, boards, agencies, and commissions.
  - Defining the jurisdiction, organization, and procedures of local government institutions.

11-13. One of the principal missions of CA judge advocates is to support rule of law operations. Rule of law is the main focus for those judge advocates assigned to one of the rule of law functional specialty teams. For more information on rule of law, see chapter 10.

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## Chapter 12

# Defense Support of Civil Authorities Operations

This chapter provides a synopsis of legal principles to consider in defense support of civil authorities operations. Given their complex and fact-specific nature, defense support of civil authorities operations require planners and Judge Advocate General's Corps personnel to work closely to ensure operations do not violate Federal law, state law, or international treaties.

## OVERVIEW

12-1. State and local governments have the primary responsibility for protecting life and property and maintaining law and order in the civilian community. Supplementary responsibility is vested by statute in specific agencies of the U.S. Government other than the Department of Defense (DOD). *Defense support of civil authorities* is defined as support provided by US Federal military forces, Department of Defense civilians, Department of Defense contract personnel, Department of Defense component assets, and National Guard forces (when the Secretary of Defense, in coordination with the governors of the affected states, elects and requests to use those forces in Title 32, United States Code, status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events (DODD 3025.18).

12-2. Defense support of civil authorities includes operations that address the consequences of natural or man-made disasters, accidents, terrorist attacks, and incidents in the United States and its territories. The military's role in defense support of civil authorities operations is well defined and is limited by Federal law and regulation in scope and duration. Based on the limited authorities and express limitations placed on scope of the military's role, U.S. personnel should know the legal considerations. Furthermore, Judge Advocate General's Corps (JAGC) personnel should integrate themselves into the planning process to ensure staff plans properly account for the parameters set forth by U.S. laws and DOD directives. In so doing, these legal restrictions will serve as critical screening criteria during course of action development, analysis, comparison, and approval. More detailed information on defense support of civil authorities operations and the role of the judge advocate in support of these missions can be found at FM 3-28 and the Domestic Operational Law Handbook for Judge Advocates.

## AUTHORITY OF A STATE GOVERNOR

12-3. Governors serve as commanders in chief of their state National Guard forces and may assume special powers upon the declaration of a disaster, emergency, enemy attack, or riot. The authority of the governor is circumscribed or limited by United States Code (USC) and each state's law and statutes.

12-4. Governors also issue executive orders declaring "states of emergency" and ensure that state agencies plan for actions in the event of a disaster. Once a disaster occurs, the governor determines how to respond to a local government's request for assistance. If appropriate, the governor declares a state of emergency, activates the state response plan, and may call up the National Guard under the governor's own authority for state active duty or with Secretary of Defense approval under Section 502(f) of Title 32, USC. The governor gives the National Guard its missions and determines when to withdraw National Guard forces.

## AUTHORITIES FOR FEDERAL MILITARY SUPPORT

12-5. The U.S. military has provided support to civil authorities in response to civil emergencies and natural disasters throughout its history. While defense support of civil authorities (DSCA) is the current terminology used to describe this function, the terminology—military assistance or military support to civil

authorities, military support of civil defense, and employment of military resources in natural disaster emergencies within the United States—has varied over the years. The change in terminology reflects the evolving changes in authorities granted to DOD by the President and the Congress.

12-6. The primary authorities to provide DSCA reside with the President and the Secretary of Defense. The President derives Constitutional, inherent, and statutory authorities from Articles II and IV of the Constitution, Supreme Court case law, and Federal statutes such as the Stafford Act (see paragraph 12-7 and 12-8). The Secretary of Defense derives his authority from Federal statutes.

### **THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT**

12-7. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (known as the Stafford Act) is the primary federal statute giving the President the authority to direct federal agencies to provide assistance to state and local authorities during an incident. The purpose of this assistance is to save lives, alleviate human suffering, protect public health and safety, and lessen or avert the threat of a catastrophe. The Stafford Act allows four ways for the President to provide federal—including military—support to civil authorities. Within these four categories, military support may include aviation, communications, engineering, logistical, medical, public affairs, and other capabilities.

12-8. The President provides Federal support by declaring a major disaster, declaring an emergency, or exercising DOD ten-day emergency work authority. These three categories require a request from the governor of the affected state before the President can initiate assistance. The differences between the two declarations involve the types of events covered, amount of Federal assistance provided, duration, and degree of damage. Finally, the President may, without a request for assistance from a governor, unilaterally issue an emergency declaration and send federal assets, including federal military forces, to an area or facility over which the federal government exercises exclusive or primary responsibility by virtue of the Constitution or a federal statute. This may include federal missions, personnel, equipment, and property.

### **AUTHORITY OF THE SECRETARY OF DEFENSE**

12-9. The Secretary of Defense, subject to the direction of the President, has the statutory authority to direct and control DOD. The Secretary of Defense also has the statutory authority to issue regulations to manage federal military personnel, property, and facilities. This includes the authority to delegate to subordinate officials the authority vested in the Secretary of Defense. Under these authorities, the Secretary of Defense has issued DOD directives pertaining to defense support of civil authorities, such as DODD 3025.18. The Secretary of Defense designated the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs as the DOD domestic crisis manager (see DODD 5111.13). The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs has policy, planning, advice, and approval authority for defense support of civil authorities operations. The Secretary of Defense retains the authority for civil disturbance and chemical, biological, radiological, nuclear, and high-yield explosives incidents; direct support to civilian law enforcement agencies; and the use or potential use of lethal force by federal military forces.

### **Immediate Response Authority**

12-10. Immediate response authority provides authority for installation commanders, DOD component heads, or responsible DOD civilian officials to temporarily employ resources under their control, subject to any supplemental direction provided by higher headquarters, and provide those resources to save lives, prevent human suffering, or mitigate great property damage in response to a request for assistance from a civil authority, under imminently serious conditions when time does not permit approval from a higher authority within the United States. Immediate response authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory.

12-11. This authority is derived from the Secretary of Defense's statutory authority and authorized in DODD 3025.18. Further information regarding the use of this authority involving requirements for immediate notification, reassessment of continued response, and cost reimbursement are contained in DODD 3025.18. Additionally, this directive addresses state immediate response.

## Emergency Authority

12-12. DODD 3025.18 authorizes emergency authority for the use of military force, under certain dire situations. This authority authorizes federal military commanders in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation. Second, it authorizes commanders when they cannot engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because: (1) such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore government function and public order; or, (2) when duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

12-13. Normally, federal military forces are not used to quell civil disturbances unless specifically authorized by the President. Given the requirements necessary to utilize emergency authority, it is clear that only under the most extreme circumstances will emergency authority apply. Further guidance on emergency authority can be found at DODD 3025.18 and DODI 3025.21.

## THE POSSE COMITATUS ACT

12-14. In common law, the Latin phrase “posse comitatus” refers to the authority wielded by the county sheriff to deputize any able-bodied male over the age of fifteen to assist in keeping the peace or to pursue and arrest a felon. U.S. marshals were also known to form a posse of able-bodied males to enforce Federal law. Due to friction of the use of posse comitatus during the reconstruction era in the South after the American Civil War, Congress passed the Posse Comitatus Act. The Act remains the primary Federal statute restricting military support to civilian law enforcement. The Posse Comitatus Act, found at Section 1385 of Title 18, USC, states—

*Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a Posse Comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years or both.*

12-15. Although a plain reading of the Posse Comitatus Act reflects that it only applies to the Army and Air Force, Section 375 of Title 10, USC, requires the Secretary of Defense to “prescribe regulations restricting the use of equipment and the direct participation of Army, Navy, Air Force, or Marine Corps personnel in supporting civilian law enforcement agencies unless otherwise authorized by law.” The statute defines direct participation as “search, seizure, arrest or similar activity.” Consequently, through Section 375 of Title 10, USC, and resulting DOD directives, the Posse Comitatus Act applies to all U.S. forces, as well as each of their respective Reserve Components serving in a Federal Title 10 status. The applicable DOD directives/instructions are as follows:

- DODD 3025.18, *Defense Support of Civil Authorities*.
- DODI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*.

12-16. The Posse Comitatus Act does not apply to the Coast Guard except during times of war when under the command and control of the Navy (Title 14).

12-17. Whether the Posse Comitatus Act applies to Army or Air National Guard personnel depends upon the Soldier’s or airman’s duty status. National Guard personnel may be ordered to duty under one of three statutory frameworks: Title 10, Title 32, and State active duty.

12-18. When in a Title 10 status, National Guard personnel are federally funded and under Federal command and control. Consequently, they are subject to the Posse Comitatus Act.

12-19. When in a Title 32 status, National Guard personnel are federally funded but remain under the control of the state. Although federally funded, because National Guard members in a Title 32 status fall under state control, they do not fall under the posse comitatus restrictions and may perform those law enforcement duties authorized by state law.

12-20. National Guard personnel performing state active duty missions are state-funded and under state control. This is typically the status in which National Guard personnel perform duties when a governor

“calls out the National Guard” to respond to emergencies, civil disturbances, or disasters or to perform other duties authorized by state law. The Federal government may reimburse costs associated with a state active duty response pursuant to a Presidential major disaster or emergency declaration. National Guard personnel on state active duty status do not fall under posse comitatus restrictions and may perform those law enforcement duties authorized by state law.

12-21. Civilian employees of the military are only subject to the prohibitions of the Posse Comitatus Act if they are under the direct command and control of a servicemember in a Title 10 status.

12-22. Posse Comitatus Act restrictions applying to the Federal military personnel through Section 375 of Title 10, USC, and implementing directives (see DODI 3025.21) prohibit the following forms of direct assistance:

- Interdiction of a vehicle, vessel, aircraft, or other similar activity.
- Search or seizure.
- Arrest, apprehension, and stop and frisk.
- Surveillance or pursuit of individuals or as undercover agents, informants, investigators, or interrogators.

12-23. Sections 371–382 of Title 10, USC, and DOD directives allow various forms of indirect assistance to civilian law enforcement agencies such as—

- Sharing information collected during the normal course of military training or operations.
- Using military equipment.
- Training and advising on use of equipment.
- Providing personnel for maintenance and operation of equipment.
- Providing weapons of mass destruction support.

12-24. DODI 3025.21, Enclosure 3, states that the following forms of direct assistance are not prohibited by the Posse Comitatus; therefore, they are considered exceptions to the Act:

- Actions taken for the primary purpose of furthering a military or foreign affairs function of the United States; also known as the “military purpose doctrine.” Such actions include—
  - Investigations and other actions related to the commander’s authority to maintain law and order on a military installation or facility.
  - Protection of classified military information or equipment.
  - Protection of DOD personnel, DOD equipment, and official guests of the DOD.
- Actions taken under emergency authority as authorized by DODD 3025.18. See paragraphs 12-9 through 12-13 for a discussion of this authority.
- Actions taken pursuant to insurrection statutes (Sections 331–334 of Title 10, USC). These statutes permit the President to use the armed forces to enforce the law under the following circumstances:
  - There is an insurrection within a state and the state legislature (or governor, if the legislature cannot be convened) requests assistance from the President.
  - Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the U.S. make it impracticable to enforce the laws of the U.S. by the ordinary course of judicial proceedings.
  - An insurrection or domestic violence opposes or obstructs Federal law, or so hinders the enforcement of Federal or state laws that residents of the state are deprived of their constitutional rights and the states are unable or unwilling to protect these rights.
- Other actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations.

## **RULES FOR THE USE OF FORCE**

12-25. Within the U.S. and its territories, Soldiers follow the rules for the use of force (RUF), not rules of engagement (ROE). While ROE are permissive measures allowing the maximum use of force appropriate

for the mission, RUF are restrictive measures intended to allow only the minimum amount of force necessary to accomplish the mission. For more discussion of the RUF see chapter 7.

## INTELLIGENCE OVERSIGHT

12-26. Intelligence oversight refers to the law and regulations that balance the Constitutional right of individuals to privacy with the need for the federal government to collect intelligence for national security purposes. Judge advocates must understand and ensure that commanders understand that DOD directives and Service regulations restrict the military from collecting or possessing information on U.S. citizens, whether individuals or groups. The following individuals and groups are protected by intelligence oversight rules:

- U.S. citizens.
- Lawful permanent resident aliens.
- Unincorporated associations substantially composed of U.S. citizens or permanent resident aliens.
- Corporations incorporated in the United States, except for those directed and controlled by a foreign government.

12-27. Domestic operations are similar to missions conducted overseas in that they require situational awareness for mission success. Overseas, intelligence assets normally provide this understanding. Judge advocates must recognize that collecting domestic intelligence by necessity entails collecting information on U.S. citizens. Therefore, the rules regarding intelligence collection in the U.S. must comply with Constitutional protections against unlawful search and seizure. Judge advocates involved in planning or executing defense support of civil authorities missions should not hesitate in seeking out expertise to assist in this complicated area.

12-28. The restrictions put in place by intelligence oversight directly affect specific Army elements and organizations conducting authorized intelligence activities. The following documents contain the core legal authorities for intelligence oversight and must be read by judge advocates before advising commanders on the collection of information in a domestic support operation:

- AR 380-13, *Acquisition and Storage of Information Concerning Non-Affiliated Persons and Organizations*.
- AR 381-10, *U.S. Army Intelligence Activities*.
- DOD 5240.1-R, *Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons*.
- DODD 5200.27, *Acquisition of Information Concerning Persons and Organizations not affiliated with the Department of Defense*.
- DODD 5240.01, *DOD Intelligence Activities*.
- Executive Order 12333 (1981), *United States Intelligence Activities*, as amended by Executive Order 13470 (2008).
- Foreign Intelligence Surveillance Act of 1978 (Public Law 95-511).
- National Security Act of 1947.
- U.S. Constitution.

12-29. Airborne sensors and unmanned aircraft systems pose particular challenges for intelligence oversight. These systems provide commanders and civil authorities with powerful tools to help them assess the situation on the ground, particularly in the initial stages of response. However, information gathered by these systems can conflict with the intelligence oversight restrictions. See DODD 3025.18 for additional guidance on the use of unmanned aircraft systems in defense support of civil authorities operations.

## SENSITIVE INFORMATION

12-30. Any information acquired on individual citizens and specific civilian organizations by military intelligence personnel and capabilities or by DOD law enforcement antiterrorism or personnel protecting the force is extremely sensitive. Its collection must be authorized, and all information collected must be

provided directly to the supported law enforcement agency, unless separate exceptions exist permitting retention by the DOD. Otherwise, the military unit may not retain it. Sensitive information includes criminal intelligence generated by civilian law enforcement agencies and passed to military units involved in defense support of civil authorities; similarly it includes information and reports from Soldiers who witness what they believe to be criminal activity.

12-31. There are legal restrictions on using information about individuals and organizations physically located within the United States and its possessions unless they are part of DOD (military, civilian, or contractor). The core regulations pertaining to these restrictions are DODD 5200.27 and AR 380-13. The restrictions on the use of law enforcement information govern the activities of all members of DOD (uniformed members and civilians).

## SHARING INFORMATION

12-32. Because of these restrictions, commanders should ensure intelligence and sensitive information is not only lawfully collected or acquired, but is also lawfully retained and disseminated. DOD operates under the common Congressional mandate to ensure all agencies, including DOD, share homeland security and homeland defense information and intelligence with the proper authorities to identify threats rapidly and effectively. However, the process requires careful compliance with existing laws and regulations. The key is to understand these requirements, their inherent complexities, and the requirement to protect civil rights.

## JUDGE ADVOCATE RESPONSIBILITIES

12-33. Judge advocates know that all requests from civil authorities for assistance are evaluated for—

- Legality – compliance with the law.
- Lethality – potential use of lethal force by or against DOD forces.
- Risk – safety of DOD forces.
- Cost – including the source of funding and the effect on the DOD budget.
- Appropriateness – whether providing the requested support is in the interest of the DOD.
- Readiness – impact on the DOD’s ability to perform its primary mission.

12-34. Judge advocates advising commanders and staffs on defense support of civil authorities operations must be familiar with the variety of legal issues that might arise. Equally important is the need for judge advocates to know where to go to find answers. In addition to the statutes, policies, directives, regulations, case law, field manuals, and other documentary sources, judge advocates should establish close working relationships with the legal advisors of supporting agencies and organizations, all of whom can provide expert assistance in resolving legal issues.

12-35. In conclusion, defense support of civil authorities is governed by different laws and regulations than military operations conducted in foreign countries against a hostile force. Legal issues will often arise and necessitate timely legal advice throughout a defense support of civil authorities operation. The character of the Constitution and laws enacted by successive Congresses create a complicated legal environment. Commanders and judge advocates should note that this chapter only provides a brief introduction and summary. This chapter does not provide a comprehensive review of every requirement and restriction. Commanders should always seek legal advice. Judge advocates should not hesitate in coordinating to consult subject matter experts within the JAGC or other agencies if appropriate.



## Chapter 13

# Financial Management and Deployment Contracting

This chapter addresses the issues related to financial management and expeditionary contracting in which judge advocates may become involved. Specifically, it discusses the fiscal triad and deployment contracting.

## OVERVIEW

13-1. Robust resource support to contingency operations forces, especially in the early stages of a contingency operation, relies not only on the traditional stock-fund logistic supply system, but also on the effective and efficient execution of theater procurement support. This execution is made possible by the fiscal triad comprised of financial management, contracting, and legal counsel. See figure 13-1. The center of the fiscal triad is the unit commander who generates mission requirements driving the procurement process. All work in the procurement process is directed toward generating, sustaining, and preserving combat power. The fiscal triad represents the legally-binding process that governs the critical path between contracting and financial management for acquisition management, internal controls, and fiscal law prescribed by the procurement process. Financial management, contracting, and legal counsel comprise a system that fulfills required fiscal support, from the acquisition and certification of funds, to the legal review of the proposed contracting action, to the contracting for goods and services, and finally to the disbursing and accounting of public funds. See FM 1-06 for more details related to financial management and the role of the fiscal triad.

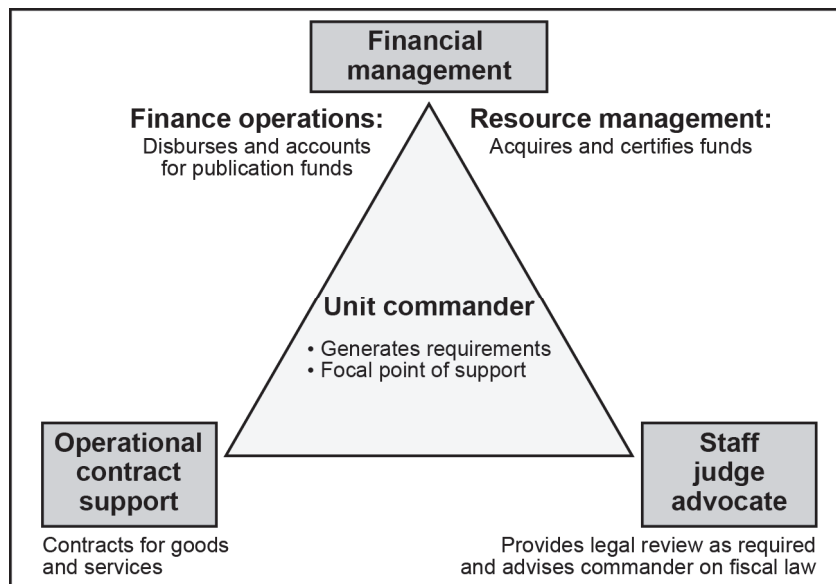


Figure 13-1. Fiscal triad

## FISCAL TRIAD

13-2. The fiscal triad is formed by the financial manager, the contracting agent, and the judge advocate. Each member of the fiscal triad must coordinate to prevent fraud, waste, and abuse of government funds. To ensure separation of duties, each element of the triad is independent, yet each element works closely

with the other to obtain products or services to meet the commander's needs in compliance with applicable laws and regulations.

### **FINANCIAL MANAGER**

13-3. The financial management mission is to ensure that proper financial resources are available to accomplish the mission in accordance with commanders' priorities. It is comprised of two mutually supporting core functions, resource management and finance operations. Key resource management tasks are providing advice and recommendations to the commander; identifying sources of funds; forecasting, capturing, analyzing and managing costs; acquiring funds; distributing and controlling funds; certifying funds, tracking costs and obligations, establishing and managing reimbursement processes; and establishing and managing the Army Managers' Internal Control Program. Key finance operations tasks are to provide timely commercial vendor and contractual payments, various pay and disbursing services, oversee and manage the Army's Banking Program and to implement financial management policies and guidance as prescribed by the Office of the Under Secretary of Defense (Comptroller) and national financial management providers. Fiscal law is of primary concern to financial managers. Failure to apply fiscal law principles properly may lead to unauthorized expenditures of funds and consequently administrative or criminal sanctions against those responsible.

### **CONTRACTING OFFICER**

13-4. The contracting officer is the only authorized (warranted) procurement agent legally capable of entering the U.S. Government into a contract.

### **LEGAL COUNSEL**

13-5. Judge advocates at all command levels provide fiscal law and contracting advice to the commander and conduct legal reviews of proposed contracts and other proposed procurement actions. As a member of the fiscal triad, judge advocates can assist the commander, financial manager, and contracting officers by proactively identifying resource requirements and shortfalls for units and the mission throughout the operations process.

### **COORDINATION**

13-6. Synchronization of the fiscal triad requires constant coordination. Measures to facilitate coordination range from co-locating financial managers, contracting, and legal assets; conducting fiscal triad meetings at a regular time; to participating in any pre-deployment site survey to establish initial procurement support capabilities or coordinate with currently existing procurement assets in theater.

## **DEPLOYMENT CONTRACTING**

13-7. Judge advocates are involved throughout the deployment contracting process. They play a key role in the preparation for deployment and assist in handling any contracting issues that arise before, during, and after the deployment.

### **PREPARATION FOR DEPLOYMENT**

13-8. Deploying judge advocates are identified at the earliest possible time to ensure they receive the contract and fiscal training necessary to succeed in their contingency mission. Such training includes the contract attorney course offered by The Judge Advocate General's Legal Center and School. Operational commanders and their legal advisors recognize the impact of contracting and contractors in their expeditionary operations and on their missions. Units develop plans to integrate contracting personnel and teams into their organization and plan for deployment. Judge advocates should be especially alert for the authorized use of emergency acquisition flexibilities in support of expeditionary operations. Whether supported by a contracting support brigade or some other nonorganic organization, units plan and train the other organizations to help meet the unit's needs. Judge advocates should take the lead in advocating expeditionary contracting preparation. Generally, the contracting element consists of contracting officers,

field ordering officers, legal personnel, financial managers, pay agents, and logistic and other support personnel.

13-9. Judge advocates review existing or proposed plans, paying particular attention to the financial management tab to the Personnel Service Support appendix to the Sustainment annex. This annex—

- Prescribes funding responsibility and financial management support, acquisition, and contracting appendixes that should address the identification and training of contracting officer representatives.
- Ensures contracting and financial management assets are among the first deployed.
- Evaluates the availability of any Reserve Components contracting assets.
- Considers establishing an acquisition review board for major deployments.

13-10. Failing to adequately plan for and deploy contracting and financial management assets at the initial stages increases the chances for procurement mistakes and abuse with long lasting, negative effects.

13-11. Judge advocates review combatant command policies and procedures, determine and seek emergency acquisition flexibilities as appropriate, and establish contact with overseas and higher headquarters' contracting activities. If possible, they establish early contact with counterparts already in combatant command completing contracting actions. Regardless of the existence of any prior deployment to the area, they establish contact with higher headquarters contracting activities. These might include Joint Theater Support Contracting Command, Army Contracting Command, Expeditionary Contracting Command, Army Sustainment Command, Medical Command (Deployment Support) or Medical Brigade, and Defense Contract Management Agency.

13-12. Unit predeployment funding concerns include the following:

- Certified funding.
- Government purchase cards.
- Availability of funds.
- Imprest funds.

A deployable unit coordinates to have funds certified as available in bulk to support deployment purchases.

13-13. Commanders can use government purchase cards during expeditionary contracting. Units should remember that the funding tied to their credit card at home station will not remain the same during deployments. Units coordinate to adjust the funding or receive separate charge cards through resource management channels.

13-14. Judge advocates should assist in researching the availability of specific appropriations and authorizations for the particular operation. Congress may provide specific funds for purposes not otherwise routinely found for non-expeditionary Department of Defense missions. Provision of this funding authority will depend on the operation.

13-15. For deployments into immature areas, commanders consider establishing an imprest fund in advance of deployment notification. An imprest fund operates like a petty cash fund; it is replenished as payments are made from it. The imprest fund should include local currency if available before deployment.

## **CONTRACTING DURING DEPLOYMENT**

13-16. Competition is the law. Absent statutory authority, full and open competition is required by the Competition in Contracting Act even during deployments overseas. Generally, the expected cost of the goods or services required determines the extent of competition required. Most units in expeditionary contracting use simplified acquisition procedures. Judge advocates should identify or request emergency acquisition flexibilities, which may increase thresholds and otherwise streamline competition requirements. Normally, higher headquarters handle large-scale acquisitions with specially trained contracting professionals. Contracting officers work closely with contract law attorneys to ensure the required contracting procedures are followed with respect to the funding source.

13-17. Existing ordering agreements, indefinite delivery contracts, and requirements contracts may be available to meet recurring requirements, such as fuel and subsistence items. Some of these standing contracts include the civil augmentation programs (CAPs) and other existing contracts.

13-18. CAP is designed primarily for use where no treaties exist are standing, long-term external support contracts designed to augment service logistic capabilities with contracted support in both preplanned and short notice contingencies. Examples include Army Logistics Civil Augmentation Program, Air Force Contract Augmentation Program, Navy Global Construction Capability Contract, and Navy Global Contingency Service Contract. Contracting officers can use these contracts inside as well as outside the continental United States. CAP is a service contract designed to provide sustainment, including base operations support, for an arriving force in an austere environment. The funding restrictions applicable in all other areas of procurement apply to the CAP contract as well. Commanders should use CAP judiciously with command oversight of requirements, contractor performance, and surveillance.

13-19. Other existing contracts may also be available to meet a unit's needs. Several statutory authorities provide the flexibility to use other Army contracts or contracts through other government agencies. Judge advocates may consider use of these other existing contracts.

13-20. New and existing contracts are not the only methods for meeting the needs of deployed military forces. The military supply system is the most common source of supplies and services. Acquisition and cross-servicing and host-nation support agreements exist with North Atlantic Treaty Organization (commonly known as NATO), Korea, and other major U.S. allies. Finally, Secretaries of the Army, Navy, and Air Force retain substantial residual powers they can use to meet critical requirements that cannot be fulfilled using normal contracting procedures.

13-21. The Army is authorized to lease foreign real estate for military purposes. This authority is delegated on an individual lease basis. Billeting services are acquired by contract, not lease. True leases normally are completed by the Army Corps of Engineers using contingency real estate support teams.

## EXPEDITIONARY CONTRACTING ISSUES

13-22. Only warranted contracting officers can legally bind the U.S. Government in contract. Contracting officers may provide limited authority to field ordering officers to complete on-the-spot purchases under the micropurchase threshold. This authority is limited to the terms specified by the contracting office. It does not provide the field ordering officers any warranted contracting authority.

13-23. Sometimes government officials without contract authority purport to bind the government by arranging for the delivery of goods or services. An *unauthorized commitment* is an agreement that is not binding solely because the United States Government representative who made it lacked the authority to enter into that agreement on behalf of the United States Government (JP 4-10). Individuals making unauthorized commitments may be personally liable to the contractor for the cost of the goods or services. Subject to dollar limitations, certain officials including the chief of a contracting office, senior contracting official, and the head of contracting activity may ratify an unauthorized commitment, which then binds the U.S. Contracting officials have no obligation to ratify any unauthorized commitment.

13-24. Contracts shall not be used for the performance of inherently government functions. Examples of inherently government functions include:

- Direct conduct of criminal investigations, control of prosecutions, and performance of adjudicatory functions.
- Command of military forces, especially the leadership of military personnel, or direction or control of other government employees.
- Actions that bind the government such as contracts, policies, or regulations.
- Actions that significantly affect the life, liberty, or property interests of private persons.
- Ultimate control exercised over government property or money.

13-25. Contracting for personal services is illegal, absent specific statutory authority. A personal services contract is one that, by its express terms or as administered, makes the contractor personnel appear to be government employees. Normally, the government is required to obtain its employees through civil service laws. A personal services contract is generally characterized as one creating an employer-employee

relationship between the government and the contractor's personnel. One indicator of personal services is the continuous supervision and control of the contractor employees by government employees.

13-26. Planning is critical to the success of contracting operations. Identification and proper training of personnel before deployment is critical. In addition to understanding the basic contracting rules that will apply during U.S. military operations, judge advocates, field ordering officers, and contracting personnel must also know fiscal law principles. Only warranted contracting officers and designated personnel with express written authorization to make micropurchases have authority to bind the government by contracting with vendors. Purchase agreements made by someone lacking that express actual authority to contract are unauthorized commitments. The government has no obligation to pay for the purchases and a contracting officer is not obligated to ratify the purchases. Judge advocates should ensure that any unauthorized commitments that do occur are identified and reported as early as possible while they are easier to rectify.

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## Chapter 14

# Special Operations Forces

Special operations forces play a number of key roles across the entire spectrum of conflict. Special operations often entail a wide variety of legal issues, many of which cannot readily be discerned without a working knowledge of special operations doctrine, capabilities, and organization. This chapter provides judge advocates with general information about special operations forces and describes some of the distinctive tasks that legal personnel in special operations units may be called upon to perform.

### OVERVIEW

14-1. *Special operations* are operations requiring unique modes of employment, tactical techniques, equipment and training often conducted in hostile, denied, or politically sensitive environments and characterized by one or more of the following: time sensitive, clandestine, low visibility, conducted with and/or through indigenous forces, requiring regional expertise, and/or a high degree of risk (JP 3-05). These operations often require covert, clandestine, or low visibility capabilities. Special operations are applicable across the spectrum of conflict. They can be conducted independently or in conjunction with operations of conventional forces or other government agencies and may include operations with and through indigenous or surrogate forces. Special operations differ from conventional operations in degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets. Likewise, special operations forces (SOF) limitations include austere logistic support systems that require extensive support from conventional forces, host-nation, and contracted support. SOF are not used as a substitute for conventional forces.

14-2. The geographic combatant commander often plans a joint special operations effort. This is frequently done through a theater special operations command, or a separately-formed joint special operations task force. These commands have responsibility to execute the operations in accordance with the joint plan or theater security cooperation plan. It is important to recognize that the joint special operations task force and the forces comprising it form a separate joint task force. Nevertheless, the geographic combatant commander may place the joint special operations task force under the operational control or tactical control of another joint task force, or designate elements to serve in direct support of subordinate unit commanders for portions of the theater operations. In support of these possible mission command structures or relationships, special operations mission command elements and special operations liaison elements may be created to assist in coordination, deconfliction and integration with conventional operations. At times, missions may also be planned and executed by elements of the United States Special Operations Command, in coordination with the affected geographic combatant command.

### CORE TASKS OF SPECIAL OPERATIONS FORCES

- 14-3. The eight core tasks of SOF are:
- Unconventional warfare.
  - Foreign internal defense.
  - Direct action.
  - Special reconnaissance.
  - Counterterrorism.
  - Military information support operations.

- Civil affairs operations.
- Counterproliferation of weapons of mass destruction.

14-4. As collateral activities, SOF may participate in security assistance, security force assistance, humanitarian assistance, antiterrorism, counterdrug operations, personnel recovery, and other special activities. Most of these terms have technical meanings. Detailed information about special operations is contained in JP 3-05.

## **TYPES OF SPECIAL OPERATIONS FORCES**

14-5. Legal personnel provide legal support to special forces groups, ranger regiments, special operations aviation regiments, military information support operations, and civil affairs.

### **SPECIAL FORCES GROUPS**

14-6. Special forces plan, prepare for, and when directed, deploy to conduct unconventional warfare, foreign internal defense, special reconnaissance, and direct actions in support of U.S. national policy objectives within designated areas of responsibility. Special forces units continually train to conduct unconventional warfare in any of its forms—guerrilla warfare, evasion and escape, subversion, and sabotage. A special forces group legal office is composed of a command judge advocate (major), a senior paralegal noncommissioned officer (sergeant first class), and a paralegal noncommissioned officer (NCO). Each special forces battalion within the group has its own legal office consisting of a judge advocate (captain) and a paralegal NCO.

### **RANGER REGIMENT**

14-7. Rangers are the masters of special light infantry operations. These include attacks to temporarily seize and secure key objectives and other light infantry operations requiring unique capabilities. Like their Special forces counterparts, rangers can infiltrate an area by land, by sea or by air. The ranger regiment legal office is composed of a command judge advocate (major), assistant judge advocate (captain), senior paralegal NCO (sergeant first class), and a paralegal specialist. Each battalion legal office within the regiment contains a paralegal NCO and a paralegal specialist.

### **SPECIAL OPERATIONS AVIATION REGIMENT**

14-8. Special operations aviation is a unique unit that supports SOF on a worldwide basis with three types of modified rotary wing platforms. The capabilities of the special operations aviation units include inserting, resupplying, and extracting U.S. and Allied SOF personnel. They also assist in SOF Search and Rescue, and Escape and Evasion activities. In addition to general aviation support to the SOF community, these units provide airborne mission command, and fire support. The composition of a special operations aviation regiment legal office consists of a command judge advocate (major), one operational law judge advocate (captain), and one senior paralegal NCO (sergeant first class).

### **MILITARY INFORMATION SUPPORT OPERATIONS GROUP**

14-9. A military information support operations group disseminates truthful information to foreign audiences in support of U.S. goals and objectives. Specifically, military information support operations units enable SOF to conduct in-depth analyses of foreign target audiences. SOF concentrate on the cultural, historical, political, social, economic, and religious characteristics for exploiting the psychological vulnerabilities of foreign target audiences to support U.S. objectives. Military information support operations units can accomplish these tasks by disseminating messages in the form of leaflets, posters, broadcasts, audiovisual means, and other developing mediums based on emerging technology. Each unit has its own intelligence and audiovisual specialists. A military information support operations group (airborne) legal office consists of a command judge advocate (major), an administrative law judge advocate (captain), a trial counsel (captain), one senior paralegal NCO (sergeant first class), and five paralegal NCOs.



## **CIVIL AFFAIRS BRIGADE**

14-10. Civil affairs seeks to prevent civilian interference with tactical operations, assist commanders in discharging their responsibilities toward the civilian population, and provide liaison with civilian government agencies. In depth discussion of civil affairs operations are discussed further in Chapter 11. The majority of civil affairs units are reserve units which report to United States Army Reserve Command and these are not SOF units. The Regular Army civil affairs brigade (airborne) legal office contains one command judge advocate (major) and one paralegal NCO.

## **CONSIDERATIONS OF SPECIAL OPERATIONS FORCES**

14-11. Legal practice in special operations unit covers the six core legal disciplines as in any other Army legal office. The practice of international and operational law is of particular emphasis as special operations missions are legally and politically sensitive, especially in the absence of international armed conflict. Judge advocates advise the commander on traditional law of war issues, as well as the requirements of domestic United States law (such as fiscal, security assistance, and intelligence oversight laws) and broader international law requirements (such as those in mutual defense treaties and host-nation support agreements). Army SOF legal personnel receive support and technical supervision from the staff judge advocate (SJA), United States Army Special Operations Command, and other SJAs for the commands to which the SOF unit is attached or assigned or under the administrative control. For example, special forces would receive support and technical supervision from the SJA, United States Army Special Forces Command (Airborne). Paragraphs 14-12 through 14-17 illustrate unique considerations that may arise during legal support to SOF.

## **UNCONVENTIONAL WARFARE**

14-12. During unconventional warfare, establishing, training, and operating with surrogate forces will often have specific funding authorities and policy guidance in addition to an analysis of such concepts of operations in light of the law of war. Military source operations conducted by SOF will require an understanding of advanced special operations training and skill craft.

## **FOREIGN INTERNAL DEFENSE**

14-13. Legal practice in special operations unit during foreign internal defense have fiscal law considerations associated with joint combined exchange training. In addition close coordination with the regional security officer within the concerned American Embassy may be required depending on the training requirements and physical security issues for the military advisory team. Familiarity with guidance and policies governing foreign disclosure can be vital when transparent targeting becomes a focal point between the U.S. combat advisory element and the partnered host-nation security force.

## **DIRECT ACTION**

14-14. Due to the political sensitivities associated with many SOF direct action missions, judge advocates thoroughly understand the rules of engagement. While intense planning may support an approved SOF concept of operations, the time that exists between the trigger—human intelligence or signals intelligence—and actions on the objective may be measured in minutes. Soldiers will not have an opportunity to overcome a learning curve for the rules of engagement. The complexity is compounded during combined direct action missions with a partnered host nation force. Hence, the legal advisor must thoroughly understand the concept of operations.

## **SPECIAL RECONNAISSANCE**

14-15. Often the area of operations will require SOF conducting special reconnaissance to wear nonstandard uniforms. Sometimes they do this for physical security and other times the low visibility of the operation dictates this requirement. Again, a thorough understanding of the applicable theater policies along with a law of war analysis will be vital for competent and effective legal advice.

## **COUNTERTERRORISM**

14-16. In many instances, special forces will conduct counterterrorism operations unilaterally due to the political sensitivities of the United States as well as the host nation. This will often present issues of sovereignty. Of equal importance will be any issues addressing associated detention operations and intelligence exploitation.

## **MILITARY INFORMATION SUPPORT OPERATIONS**

14-17. The realm of psychological influence spans the spectrum of conflict and all types of operations that often have very distinct approval processes and approval authorities. A clear understanding of these approval processes and approval authorities will ensure this enabling capability is effective and timely. Additionally, understanding the distinct missions between military information support operations and public affairs will ensure legal advisors apply the correct spirit and letter of the law when reviewing concept of operations that involve information operations.

## **Chapter 15**

# **Security Force Assistance**

This chapter provides judge advocates with general information about security force assistance and describes some of the distinctive tasks that legal personnel supporting security force assistance missions may be called upon to perform.

### **OVERVIEW**

15-1. The security force assistance (SFA) mission is part of a larger scope of activities that may include security cooperation, security assistance, foreign internal defense, and security sector reform. Many of these mutually supporting activities rely on different funding authorities and different executive agencies for policy and guidance. As the employment of conventional and general purpose forces for SFA missions increases, the number of judge advocates that may be tasked to address the associated legal issues is expected to grow over time. See FM 3-22 for more information about SFA.

### **SECURITY FORCE ASSISTANCE CONCERNS**

15-2. Legal support is provided to SFA concerning fiscal authorities, human rights, international law and agreements, host-nation police, planning, and transparent targeting.

#### **FISCAL AUTHORITIES**

15-3. The fiscal authority to conduct SFA resides either in Title 22, United States Code or in Title 10, United States Code. Title 22 contains the Foreign Assistance Act and the Arms Export Control Act. These funds are generally managed by the Department of State and constitute the majority of fiscal authorities related to SFA. Title 10 authorizes limited types of military-to-military contacts, exchanges, and exercises as well as limited forms of humanitarian and civic assistance. These limited Title 10 authorities are for purposes of interoperability, safety, and familiarization training. In larger SFA missions, Congress may authorize specific appropriations. Likewise, the President may sign a National Security Presidential Directive that makes the geographic combatant commander responsible for coordinating all United States government efforts in a particular theater of operation. Without these limited exceptions, the executive agency for training and equipping host-nation security forces resides with the Department of State.

#### **HUMAN RIGHTS**

15-4. Inherently linked to the fiscal authorities for SFA is the issue of human rights. The Foreign Operations Appropriation Act, commonly referred to as the Leahy Amendment, prohibits the United States government from providing funds and training to a unit of a host-nation security force if credible evidence exists that the unit has committed gross violations of human rights. Once implemented, this restriction can only be lifted when the Secretary of State determines that the concerned host nation is taking effective measures to bring the responsible members of the host-nation security force unit to justice and that corrective training has been implemented.

#### **INTERNATIONAL LAW AND AGREEMENTS**

15-5. Familiarity with applicable international law and applicable agreements with the concerned host nation is vital for any judge advocate supporting SFA. Especially in dealing with internally focused SFA, familiarity with Geneva Conventions Common Article 3 is critical, for this common article is specifically intended to address those armed conflicts not of an international character. Another body of laws directly applicable to SFA encompasses status-of-forces agreements, administrative and technical agreements,

diplomatic notes, and diplomatic exchange of letters. These various agreements will discuss the legal status of military personnel as well as cover topics involving criminal and civil jurisdiction, taxation, and claims. Targeting methodology and detention operations may also be addressed. Using these agreements in support of SFA missions can be highly complex and require extensive innovative thought coupled with critical analysis.

## **HOST-NATION POLICE**

15-6. In many nations, the distinction between military, paramilitary and police within their security forces can be hard to define, especially in SFA missions where the focus is toward internal threats. The Foreign Assistance Act specifically prohibits assistance to foreign police forces by the Department of Defense except within specific exceptions or under a Presidential directive. Generally, the executive agency for security assistance to foreign police resides with the Department of State through its Bureau of International Narcotics and Law Enforcement Affairs.

## **PLANNING**

15-7. Planning SFA missions has legal implications. The development of the rules of engagement not only for the United States forces but also for the host-nation security force is of critical importance. Once the commander approves the rules of engagement effective training must be developed. Forces tailor this training culturally acceptable method for the host-nation security force to ensure immediate effectiveness. This also pertains to the training on human rights, detention operations, and intelligence exploitation. Judge advocates also integrate applicable criminal law and criminal procedures into detention operations and intelligence exploitation to foster legitimacy of the host-nation security force. Practical considerations during planning include interpreter and linguist support when United States forces and the host-nation security forces do not share a common language. Another practical consideration is to ensure the proposed military solution is supported by the technology and infrastructure of the host-nation security force as well as being culturally acceptable, such as the use of forensic evidence.

## **TRANSPARENT TARGETING**

15-8. Recent experiences within SFA missions have demonstrated the challenges of warrant-based targeting where the targeting methodology must comply with the host nation's criminal laws and procedures. In attempting to overcome this challenge, judge advocates work closely with their intelligence counterparts to seek processes that will either efficiently declassify information or develop a similar intelligence capability within the host-nation security apparatus without classification constraints. To mitigate compromising intelligence processes and products, judge advocates conduct key leader engagements with host-nation principals associated with the host-nation criminal justice system and build professional rapport that fosters mutual trust and confidence.

## Appendix A

# Army Reserve Legal Structure and Organization

This appendix discusses the structure and organization of legal support within the U.S. Army Reserve. With the transformation of the U.S. Army Reserve into an expeditionary force following September 11, 2001, the U.S. Army Reserve has likewise adapted its Judge Advocate General's Corps assets to provide an agile, expeditionary capability. These changes include restructuring of the U.S. Army Reserve judge advocate force to better support today's modular, brigade-centric Army. The transformed legal units more fully integrate large numbers of small teams consisting of deployable reserve judge advocates who perform legal support in contingency operations.

## OVERVIEW

A-1. Judge Advocate General's Corps (JAGC) personnel in the Regular Army and Reserve Components train and operate to achieve one integrated and balanced Corps. United States Army Reserve (USAR) judge advocates train with the expectation of deployment. They provide legal services in the JAGC core competencies on active duty, in areas of operations, as well as in reserve status. Legal support to operations includes the civilian legal skills that Army Reserve judge advocates bring to the fight and that traverse decisive action in diverse areas such as finance, interagency government operations, civilian law enforcement, court house operations, and municipal law. These skills, among others, enable Army Reserve judge advocates to provide effective support to all types of operations. Planners should consider and integrate these skills into planning legal support for all phases of military operations.

## U.S. ARMY RESERVE LEGAL COMMAND

A-2. The U.S. Army Reserve Legal Command exercises mission command for Army Reserve legal units when they are not mobilized. This command provides individual personnel fill capabilities while it also provides deployable unit structure. The management of deployable unit structure as an operational force requires the integration of the Army Reserve Judge Advocate Legal Services (JALS) into standard Army processes for the deployment of units as well as the use of unit personnel to fill individual mobilization requirements. The following principles guide the standardization of mobilization and training processes and procedures for Army Reserve legal units:

- The Judge Advocate General (TJAG) or the delegee receives and validates all taskings for judge advocate and other legal personnel requirements for unit or individual mobilizations.
- The Army Reserve Legal Command uses established unit rotation methodology to source validated requirements. The Army Reserve JALS uses a unit rotation methodology consistent with the unit rotation methodology in use by the Army Reserve G-3, in support of the overall Army G-3 unit rotation methodology.
- TJAG or delegee retains approval authority—under the provisions of 10 U.S. Code 806 and 10 USC 3037(c)(2)—for personnel assignment actions related to filling judge advocate mobilization requirements.
- Where possible, training opportunities for Army Reserve judge advocates should be coordinated with the Regular Army unit to which the judge advocate personnel will likely mobilize. Such coordination promotes habitual relationships and enhances familiarity and integration of the Army Reserve personnel into their projected active duty unit and mission.

## LEGAL OPERATIONS DETACHMENTS AND TEAMS

A-3. The Legal Operations Detachment–Multifunctional (LOD-M) provides a package of modular, mission-tailorable, individually deployable judge advocate teams that provide legal capabilities in support of modular units. LOD-M subordinate team capabilities support decisive action, including support to joint, interagency, intergovernmental, and multinational operations. The subordinate elements of the LOD-M are the Headquarters, the Legal Operations Team–General (LOT-G) and the Legal Operations Team–Special (LOT-S). The LOT-S and LOT-G mobilize and deploy in conjunction with the Headquarters, LOD-M, or individually, depending upon the operational need.

A-4. Headquarters LOD-M are deployed worldwide to provide legal support or direct augmentation, as required, in the six core disciplines, as well as emerging legal areas, to commands and units of all Services and components in support of mobilization and military operations.

A-5. LOT-S units provide specialized legal services to United States and Allied forces joint operations. Mission-focused areas for the LOT-S include specialized applications of core legal capabilities in emerging areas of judge advocate practice. These areas can include, but are not limited to, rule of law, security force assistance, occupation law, governance issues, detainee and internment operations, legal support to military information support operations, cyber law, and intelligence law.

A-6. LOT-G units provide legal services in theater or in CONUS. LOT-G missions vary in length from single day events in CONUS to lengthy overseas deployments. LOT-G operations focus on all core legal disciplines as discussed in this field manual: military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.

A-7. The Legal Operations Detachment–Trial Defense (LOD-TD) supplements U.S. Army Trial Defense Service assets as described in this field manual. See paragraphs 4-39 through 4-46. The LOD-TD consists of regional trial defense teams and trial defense teams. The LOD-TD and its subordinate teams are deployable assets.

A-8. The Legal Operations Detachment–Judicial (LOD-J) provides worldwide judicial services to commanders and Soldiers in support of mobilization and military operations, as directed by the Chief Judge, U.S. Trial Judiciary. Judicial unit assets preside at general and special courtsmartial, perform duties as military magistrates, and serve in various other judicial capacities. LOD-J assets have a secondary capability set of providing legal support to joint, interagency, intergovernmental, and multinational operations. The LOD-J and its subordinate components are deployable assets.

A-9. The Legal Operations Detachment–Individual Augmentee provides mission-tailored packages of deployable senior judge advocates to provide legal capabilities in a joint, interagency, intergovernmental, and multinational environment. Members mobilize and deploy to fill specific capabilities requests. While not mobilized members of this detachment support diverse and geographically distinct Army activities.

## Appendix B

# National Guard Legal Structure and Organization

This appendix describes legal support to the operational Army within the Army National Guard. It outlines the basic legal support structure and describes the implementation of the Army National Guard Trial Defense Service.

## OVERVIEW

B-1. Legal support in the Army National Guard (ARNG) is primarily embedded in its divisions and brigades, and in the state joint forces headquarters. Each state commands and controls its ARNG units. When these units are ordered to active duty or called into federal service and while in the continental United States (CONUS), they fall under the mission command of United States Army Forces Command (FORSCOM) or a subordinate FORSCOM command. The FORSCOM staff judge advocate (SJA) and subordinate FORSCOM command SJAs exercise technical supervision of these federalized National Guard judge advocates and paralegals. When ARNG units are assigned, attached, or under the operational control of other commands, the SJA of the gaining command exercises technical supervision over the assigned Judge Advocate General's Corps (JAGC) personnel.

B-2. The National Guard Bureau, while not in the chain of command, serves as the channel of communication between the state National Guards and federal entities, and formulates and administers programs to ensure the development and maintenance of ARNG units. With the exception of the selection and assignment of regional and senior defense counsel, each State selects, appoints, and assigns its officers, noncommissioned officers, and enlisted personnel. Regional and senior defense counsel are selected through a nomination process originating in the State, then sent through the Chief, ARNG Trial Defense Service (TDS) and Chief, United States Army Trial Defense Service (USATDS) to The Judge Advocate General (TJAG). Notwithstanding the State's broad appointment authority, TJAG authorizes appointments to the JAGC, and ensures that judge advocates in the ARNG are subject to the same training, educational standards, and supervision as other members of the JAGC.

B-3. Each of the fifty States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands appoints or elects an adjutant general (Commanding General in the District of Columbia) who serves as the commander of its joint forces headquarters, and oversees the State's Army and Air National Guard units. The adjutant general of each State selects a senior judge advocate of either the Air or ARNG to serve as the state judge advocate. ARNG units are structured like Regular Army units. The major ARNG units are divisions, brigade combat teams, and combat support brigades. The mission of the Office of the Staff Judge Advocate (OSJA) in ARNG units is the same as that of an OSJA in its Regular Army counterpart. ARNG brigade combat teams are the principal reserve component ground combat maneuver forces of the United States Army. The brigade legal section of a brigade combat team is modeled on—and has the mission of—the brigade legal section of a brigade combat team in the Regular Army.

B-4. Members of the JAGC in the National Guard hold dual membership. Each is a member of the Reserve Component of the Army through the Army National Guard of the United States (known as ARNGUS) and a member of the federally recognized militia of their state, the ARNG. ARNG judge advocates support the State mission and the State's federal mission. The State mission is to provide trained and disciplined forces for domestic emergencies, or as otherwise required by the governor. The State's federal mission is to maintain properly trained, equipped, and disciplined units available for prompt mobilization.

## ARMY NATIONAL GUARD TRIAL DEFENSE SERVICE

B-5. The Chief, ARNG TDS is an officer of the National Guard Bureau and is affiliated with, but operates independent of, the Office of the Chief Counsel, National Guard Bureau. The Chief, ARNG TDS provides the technical supervision, management, direction, and legal defense training for all members of ARNG

TDS while in Title 32 (non-federal) status consistent with professional responsibility and state ethics limitations. State adjutants general retain operational authority over their respective regional trial defense teams (RTDTs) and trial defense teams (TDTs) for non-TDS missions during State or National emergencies. The Chief, ARNG TDS shall have staff officers and paralegals assigned as necessary.

B-6. The RTDT provides the technical supervision, performance oversight, legal defense training, and management for up to four TDTs. State Adjutants General retain operational authority over their respective TDTs for non-TDS missions during State or National emergencies. The RTDT consists of a regional defense counsel, a senior defense counsel, and a paralegal noncommissioned officer. The RTDT organic to a theater sustainment command has an additional paralegal specialist. When not mobilized, RTDTs are assigned to their respective States and perform their TDS mission under the technical supervision of the Chief, USATDS through the Chief, ARNG TDS. Upon mobilization, RTDTs come under operational control of the USATDS. The regional defense counsel and senior defense counsel assign cases, provide training and general supervision, and assist trial defense counsel in counseling clients and preparing actions for State courts-martial, administrative boards, investigations, nonjudicial punishment, or other adverse administrative actions.

B-7. The TDT provides trial defense services for State courts-martial, administrative boards, investigations, nonjudicial punishment, or other adverse administrative actions. A TDT consists of a senior defense counsel, three defense counsel, and one paralegal noncommissioned officer. The TDTs organic to the sustainment brigades have an additional paralegal specialist. When not mobilized, TDTs are assigned to their respective States and perform their TDS mission under the technical supervision of the Chief, USATDS through the Chief, ARNG TDS. Upon mobilization, TDTs come under operational control of the USATDS.

## **ARMY NATIONAL GUARD JUDICIARY**

B-8. Military judges in the ARNG are trained and certified by TJAG similar to the military judges in the Regular Army and United States Army Reserve. While in State status, an ARNG military judge may, when authorized by applicable State law, preside over courts-martial convened under State law. Upon federalization of an ARNG military judge, the chief trial judge will review the ARNG military judge's training, background, experience, and qualities (demonstrated mature judgment and high moral character) to determine the officer's suitability to serve as a member of the Army trial judiciary. ARNG officers who qualify for such service may be assigned, as needed, to the Army trial judiciary.



## **Appendix C**

# **Lessons Learned**

This appendix provides the format the Judge Advocate General's Corps uses to capture legal lessons learned.

### **OVERVIEW**

C-1. To standardize the production of lessons learned across many different legal offices, use the format of figure C-1 when writing a report capturing lessons learned during deployments.

### **SAMPLE FORMAT**

C-2. Judge advocates base the format upon the six core legal disciplines, the emerging areas that U.S. forces practice in multinational, interagency, and defense support of civil authorities operations, and the Joint Vision 2020 concept of doctrine, organization, training, materiel, leadership and education, personnel, and facilities.

C-3. Judge advocates draft the report using the issue, decision, and recommendation methodology. The report addresses particular issues in discrete areas of the law the command and legal community faced during deployment. The report states what decisions were made and why a particular decision was reached. Finally, the report recommends courses of action to assist others that may face similar issues in the future. Clarity ensures the proper context is stated so commanders understand the issue, decision, and recommendation.

<b>JAGC Lessons Learned Format</b>	
<b>Issue:</b>	Define the issue that was confronted.
<b>Discussion:</b>	How was the issue resolved and what was the rationale?
<b>Recommendation:</b>	What should be improved in this particular area to assist addressing this issue in the future?
<b>I. International and Operational Law</b>	
<ul style="list-style-type: none"> <li>A. Chemical, biological, radiological, nuclear, and high-yield explosives</li> <li>B. Artifacts and war trophies</li> <li>C. Civil affairs</li> <li>D. Civilians on the battlefield or contractors</li> <li>E. Detention operations or prisoner of war issues</li> <li>F. Environmental</li> <li>G. International assistance or relations               <ul style="list-style-type: none"> <li>1. U.S. Government or host-nation interaction</li> <li>2. U.S. Government or multinational interaction</li> <li>3. U.S. Government or international organization interaction</li> <li>4. U.S. Government or nongovernmental organization interaction</li> </ul> </li> <li>H. Human rights law</li> <li>I. Information operations</li> <li>J. Intelligence law</li> <li>K. Interrogations</li> <li>L. Law of war or law of armed conflict               <ul style="list-style-type: none"> <li>1. Training</li> <li>2. Violations</li> </ul> </li> <li>M. Legal basis for conducting operations               <ul style="list-style-type: none"> <li>1. Security council resolutions</li> <li>2. Bilateral agreements</li> </ul> </li> <li>N. Rule of law</li> <li>O. Stability operations               <ul style="list-style-type: none"> <li>1. Security transition teams</li> <li>2. Humanitarian and civic assistance</li> </ul> </li> <li>P. Rules of engagement or targeting               <ul style="list-style-type: none"> <li>1. Rules of engagement training</li> <li>2. Collateral damage estimation</li> <li>3. Escalation of force</li> </ul> </li> <li>Q. Treaties and other international agreements and arrangements               <ul style="list-style-type: none"> <li>1. Asylum</li> <li>2. Status-of-forces agreements</li> <li>3. Other international agreements</li> </ul> </li> <li>R. Weapons systems               <ul style="list-style-type: none"> <li>1. Legal review on weapons</li> <li>2. Lethal weapons</li> <li>3. Less than lethal weapons</li> </ul> </li> </ul>	
<b>II. Administrative and Civil Law</b>	
<ul style="list-style-type: none"> <li>A. Army and Air Force Exchange Service</li> <li>B. Customs and passports</li> </ul>	

**Figure C-1. Sample lessons learned**

- C. Ethics or joint ethics regulation
  - 1. General
  - 2. Financial disclosure filing
  - 3. Gifts
- D. Freedom of Information Act or Privacy Act
- E. Internet use
- F. Investigations
  - 1. AR 15-6 investigations
  - 2. Line of duty
  - 3. Mishap and safety investigation
  - 4. Financial liability investigations of property loss
- G. Labor and employment law
- H. Law of military installations
- I. Medical issues
- J. Military personnel law
  - 1. Administrative separations
  - 2. Conscientious objectors
  - 3. Evaluation reports
  - 4. Females in combat
  - 5. Homosexuality
  - 6. Lautenberg amendment
  - 7. Letters of reprimand
  - 8. Relief for cause
- K. Morale, welfare, and recreation
- L. Miscellaneous administrative law issues

### **III. Contract and Fiscal Law**

- A. Contract and Fiscal Law Training
- B. Deployed contracting
  - 1. Contract review
  - 2. Contract administration
  - 3. Performance work statements
  - 4. Logistics civil augmentation program contracting
- C. Fiscal law
  - 1. General
  - 2. Acquisition cross-servicing agreements
  - 3. Operations and maintenance
  - 4. Commander's Emergency Response Program
  - 5. Security forces funds
  - 6. Construction funding
  - 7. Other funding sources
  - 8. Donation and disposal of property

**Figure C-1. Sample lessons learned (continued)**

**IV. Claims**

- A. Foreign claims
  - 1. Foreign Claims Act
  - 2. Real estate claims
  - 3. Other claims
- B. Personnel claims
- C. Solatia or condolence payments

**V. Legal Assistance**

- A. Children
  - 1. Adoption
  - 2. Custody
  - 3. Paternity
  - 4. Child support
- B. Citizenship
- C. Debtor or creditor issues
- D. Divorce
- E. Powers of attorney
- F. Voting assistance
- G. Servicemembers Civil Relief Act
- H. Uniformed Services Employment and Reemployment Rights Act
- I. Wills
- J. Tax preparation
- K. Miscellaneous legal assistance issues

**VI. Military Justice**

- A. General orders
- B. Judiciary
- C. Jurisdiction
- D. Magistrates
- E. Provisional units
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**Figure C-1. Sample lessons learned (continued)**

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# Glossary

The glossary lists acronyms and terms with Army or joint definitions, and other selected terms. Where Army and joint definitions are different, (Army) follows the term.

## SECTION I – ACRONYMS AND ABBREVIATIONS

<b>AAR</b>	after action review
<b>ADP</b>	Army doctrine publication
<b>AR</b>	Army regulation
<b>ARNG</b>	Army National Guard
<b>ARSOF</b>	Army special operations forces
<b>ASCC</b>	Army Service component command
<b>BCT</b>	brigade combat team
<b>CA</b>	civil affairs
<b>CAP</b>	civil augmentation program
<b>CJA</b>	command judge advocate
<b>CJCSI</b>	Chairman of the Joint Chiefs of Staff instruction
<b>CJCSM</b>	Chairman of the Joint Chiefs of Staff manual
<b>CLAMO</b>	Center for Law and Military Operations
<b>COA</b>	course of action
<b>CONUS</b>	continental United States
<b>DA</b>	Department of the Army
<b>DD</b>	Department of Defense (form)
<b>DOD</b>	Department of Defense
<b>DODD</b>	Department of Defense directive
<b>DOS</b>	Department of State
<b>DSCA</b>	defense support of civil authorities
<b>e-JAWS</b>	electronic Judge Advocate Warfighting System
<b>EPW</b>	enemy prisoner of war
<b>FM</b>	field manual
<b>FORSCOM</b>	United States Army Forces Command
<b>G-3</b>	operations staff officer
<b>GCMCA</b>	general court-martial convening authority
<b>GWS</b>	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
<b>GWS Sea</b>	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea
<b>HMMWV</b>	high-mobility multipurpose wheeled vehicle
<b>HN</b>	host-nation
<b>I-D-D-T</b>	interpret-draft-disseminate-train
<b>J-2</b>	intelligence directorate of a joint staff

<b>J-3</b>	operations directorate of a joint staff
<b>J-5</b>	plans directorate of a joint staff
<b>JAGC</b>	Judge Advocate General's Corps
<b>JAGCNet</b>	Judge Advocate General's Corps Information Network
<b>JAGU</b>	Judge Advocate General's University
<b>JALS</b>	Judge Advocate Legal Services
<b>JTF</b>	joint task force
<b>LOD-J</b>	Legal Operations Detachment–Judicial
<b>LOD-M</b>	Legal Operations Detachment–Multifunctional
<b>LOD-TD</b>	Legal Operations Detachment–Trial Defense
<b>LOT-G</b>	Legal Operations Team–General
<b>LOT</b>	legal operations team
<b>LOT-S</b>	Legal Operations Team–Special
<b>MDMP</b>	military decisionmaking process
<b>METT-TC</b>	mission, enemy, terrain and weather, troops and support available, time available, civil considerations
<b>NCO</b>	noncommissioned officer
<b>NIPRNET</b>	Nonsecure Internet Protocol Router Network
<b>OCONUS</b>	outside the continental United States
<b>OPCON</b>	operational control
<b>OPLAN</b>	operation plan
<b>OPORD</b>	operation order
<b>OSJA</b>	Office of the Staff Judge Advocate
<b>Pam</b>	pamphlet
<b>ROE</b>	rules of engagement
<b>RTDT</b>	regional trial defense team
<b>RUF</b>	rules for the use of force
<b>S-3</b>	operations staff officer
<b>SFA</b>	security force assistance
<b>SIPRNET</b>	SECRET Internet Protocol Router Network
<b>SJA</b>	staff judge advocate
<b>SOF</b>	special operations forces
<b>SROE</b>	standing rules of engagement
<b>SRUF</b>	standing rules for the use of force
<b>TACON</b>	tactical control
<b>TDS</b>	trial defense service
<b>TDT</b>	trial defense team
<b>TJAG</b>	The Judge Advocate General
<b>TJAGLCS</b>	The Judge Advocate General's Legal Center and School
<b>TSC</b>	theater sustainment command
<b>U.S.</b>	United States
<b>UCMJ</b>	Uniform Code of Military Justice



<b>USAR</b>	United States Army Reserve
<b>USARCS</b>	United States Army Claims Service
<b>USATDS</b>	United States Army Trial Defense Service
<b>USC</b>	United States Code

## SECTION II – TERMS

### **ARFOR**

The Army component and senior Army headquarters of all Army forces assigned or attached to a combatant command, subordinate joint force command, joint functional command, or multinational command. (FM 1-02)

### **civil affairs operations**

Those military operations conducted by civil affairs forces that (1) enhance the relationship between military forces and civil authorities in localities where military forces are present; (2) require coordination with other interagency organizations, intergovernmental organizations, nongovernmental organizations, indigenous populations and institutions, and the private sector; and (3) involve application of functional specialty skills that normally are the responsibility of civil government to enhance the conduct of civil-military operations. (JP 3-57)

### **civilian internee**

A civilian who is interned during armed conflict, occupation, or other military operation for security reasons, for protection, or because he or she committed an offense against the detaining power. (DODD 2310.01E)

### **defense support of civil authorities**

Support provided by US Federal military forces, Department of Defense civilians, Department of Defense contract personnel, Department of Defense component assets, and National Guard forces (when the Secretary of Defense, in coordination with the governors of the affected states, elects and requests to use those forces in Title 32, United States Code, status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events. (DODD 3025.18)

### **detainee**

A term used to refer to any person captured or otherwise detained by an armed force. (JP 3-63)

### **enemy combatant**

In general, a person engaged in hostilities against the United States or its coalition partners during an armed conflict. (DODD 2310.01E)

### **protection**

Preservation of the effectiveness and survivability of mission-related military and nonmilitary personnel, equipment, facilities, information, and infrastructure deployed or located within or outside the boundaries of a given operational area. (JP 3-0)

### **rule of law**

A principle under which all persons, institutions, and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and that are consistent with international human rights principles. (FM 3-07)

### **rules of engagement**

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. (JP 1-04)

**running estimate**

The continuous assessment of the current situation used to determine if the current operation is proceeding according to the commander's intent and if planned future operations are supportable. (ADP 5-0)

**special operations**

Operations requiring unique modes of employment, tactical techniques, equipment and training often conducted in hostile, denied, or politically sensitive environments and characterized by one or more of the following: time sensitive, clandestine, low visibility, conducted with and/or through indigenous forces, requiring regional expertise, and/or a high degree of risk. (JP 3-05)

**stability operations**

An overarching term encompassing various military missions, tasks, and activities conducted outside the United States in coordination with other instruments of national power to maintain or reestablish a safe and secure environment, provide essential governmental services, emergency infrastructure reconstruction, and humanitarian relief. (JP 3-0)

**tactical questioning**

Direct questioning by any Department of Defense personnel of a captured or detained person to obtain time-sensitive tactical intelligence information, at or near the point of capture or detention and consistent with applicable law. (JP 3-63)

**unauthorized commitment**

An agreement that is not binding solely because the United States Government representative who made it lacked the authority to enter into that agreement on behalf of the United States Government. (JP 4-10)

**working group**

A grouping of predetermined staff representatives who meet to provide analysis, coordinate, and provide recommendations for a particular purpose or function. (ATTP 5-0.1)

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**FM 1-04**  
18 March 2013

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