

FM 1-04 (27-100)

Legal Support to the Operational Army

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Preface

FM 1-04, *Legal Support to the Operational Army*, replaces FM 27-100, *Legal Support to Operations*, as the Army's keystone 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.

Traditionally, the JAGC identified its core legal disciplines as military justice, international law, administrative law, civil law, claims, and legal assistance. This manual recognizes the importance of these critical areas; however, it expands and reorganizes the concept of core legal disciplines to help synchronize these concepts with operational experience and Army doctrine. The core legal disciplines are now military justice, international and operational law, administrative and civil law, contract and fiscal law, claims, and legal assistance.

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*.

This publication applies to the Active Army, the Army National Guard (ARNG)/Army National Guard of the United States (ARNGUS), and the United States Army Reserve (USAR) unless otherwise stated.

The proponent of this publication is the United States Army Training and Doctrine Command (TRADOC). The preparing agency 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 TJAGLCS-Doctrine@conus.army.mil. Follow the DA Form 2028 format or submit an electronic DA Form 2028.

Introduction

Transforming the Army into a force capable of meeting the unique challenges of the 21st century is a monumental task. To this end, the Army has been involved in the most significant institutional change in its history. Using lessons learned from training, combat, and contingency operations, and drawing on the collective knowledge and experience of Soldiers and leaders at every level, the Army has undertaken an innovative redesign of its organizations, force structure, and doctrine.

All of these changes have been undertaken with a single goal in mind: to make the Army a more relevant, ready force; one that is capable of rapidly projecting overwhelming land combat power to the right place at the right time. In concert with these efforts, the Army has gone to great lengths to develop many technologically advanced systems that will enhance its success on the battlefield. Finally, in the midst of these sweeping changes, the Army's senior leadership has continued to emphasize that the individual Soldier is the Army's most important asset; that humans are always more important than hardware. In keeping with these themes, there is a continued emphasis throughout the Army on the Warrior Ethos and on the idea that Soldiers, whatever their branches or military occupational specialties, are warriors first.

The Judge Advocate General's Corps (JAGC) has been fully engaged in the Army transformation processes from the outset, and it remains engaged today. Continuing its proud tradition of providing superior legal support to commanders and Soldiers, the JAGC works diligently to ensure that judge advocates, legal administrators, and paralegal Soldiers are integrated in the right places in the Army's modular force structure.

THE IMPORTANCE OF DOCTRINE

The Army is a doctrine-based organization. Doctrine links theory, experimentation, and practice. Army doctrine is not prescriptive. It provides an authoritative statement on how the Army conducts full spectrum operations and gives a common language to describe how the Army fulfills its roles and responsibilities. Army doctrine is outlined in the two capstone manuals: FM 1 and FM 3-0. Together, these two publications establish a framework for a range of supporting doctrinal publications. FM 1-04 is one of the keystone doctrinal publications that support the capstone manuals. Doctrine provides the framework under which the JAGC fulfills its mission.

This manual reflects how judge advocates are 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 remain constantly aware of the operational situation and work proactively to promote the mission and serve Army personnel and their families.

Legal administrators and paralegal Soldiers successfully complete the Battle Staff NCO course. They are proficient in completing legal tasks and in managing a legal office whether in the field or in garrison. Paralegal specialists (enlisted Soldiers with military occupational specialty 27D) identify potential legal issues and raise these issues for resolution. Paralegal specialists operate under judge advocate supervision across the range of core legal disciplines and the spectrum of conflict. Noncommissioned officers also perform traditional noncommissioned officer functions. In addition to legal training, JAGC personnel train to proficiency in Soldier common tasks.

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.

THE PURPOSE OF FM 1-04

The purpose of this manual is to assist commanders and judge advocates in assigning roles and responsibilities for legal support for operations. In keeping with current trends in Army doctrine, this manual will not repeat information found in other manuals and publications. Where appropriate, this manual will provide the reader with citations to those sources. Similarly, this manual is not intended to provide detailed guidance on every single aspect of legal support to operations. Every operation is different, and each one requires its own unique kind of 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.

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Chapter 1

Legal Support to Operations: An Overview

This chapter provides an overview of the Judge Advocate General's Corps (JAGC) legal support to operations. It describes the evolution of operational law and outlines the various roles that JAGC Soldiers have to support of operations. Finally, this chapter looks at key components of Army doctrine and illustrates how legal issues and legal support are important to the planning and conduct of operations.

THE JUDGE ADVOCATE GENERAL'S CORPS MISSION

1-1. The JAGC provides proactive legal support on all issues affecting the Army and the joint force, and delivers quality legal services to Soldiers, retirees, and their families.

LEGAL ISSUES IN OPERATIONS

1-2. Legal issues are a fundamental part of modern military operations. Accordingly, JAGC Soldiers are assigned to operational billets throughout the Army. 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 operational environment 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, the conduct of investigations, and military justice. They also serve as staff officers and on boards, centers, and cells, 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 are 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 henceforth, military lawyers would 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 H 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 Battle 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. Both Operations Enduring Freedom and Iraqi Freedom continue to give rise to significant legal issues. As a result, judge advocates are in high demand in both operations. As such, the practice of operational law has become an essential component of command and control (C2). 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 reachback 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 JAGC team. In addition to their well-recognized role as technical experts, legal administrators provide their organizations with many knowledge, skills, and leadership competencies 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.)

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 is capable of providing not only superb legal support to operations, but also expertise to fight and win in any operational environment. (Chapter 4 details the duties of paralegal Soldiers assigned to SJA offices.)

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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 and operational themes. This chapter provides Judge Advocate General's Corps (JAGC) 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:

- Full spectrum operations.
- Operational themes.
- The warfighting functions.
- The operations process.
 - Lines of effort and lines of operations
 - Mission command and mission orders.

2-2. This chapter discusses the warfighting functions, mission command and mission orders, operational themes, and full spectrum operations as they relate to legal support. Chapter 6 discusses the operations process. Additional information can be found in FM 3-0, FM 3-90, and FMI 5-0.1.

FULL SPECTRUM OPERATIONS

2-3. Full spectrum operations is the name applied to the Army's operational concept—the basic approach taken by the Service to the conduct of all land operations. Full spectrum operations require continuous, simultaneous combinations of offensive, defensive, and stability or civil support tasks. (See figure 2-1.) In all operations, commanders seek to seize, retain, and exploit the initiative while synchronizing their actions to achieve the best effects possible. Operations conducted outside the United States and its territories simultaneously combine three elements—offense, defense, and stability. Within the United States and its territories, operations combine the elements of civil support, defense, and offense in support of civil authority. Army forces operate using mutually supporting lethal and nonlethal capabilities.

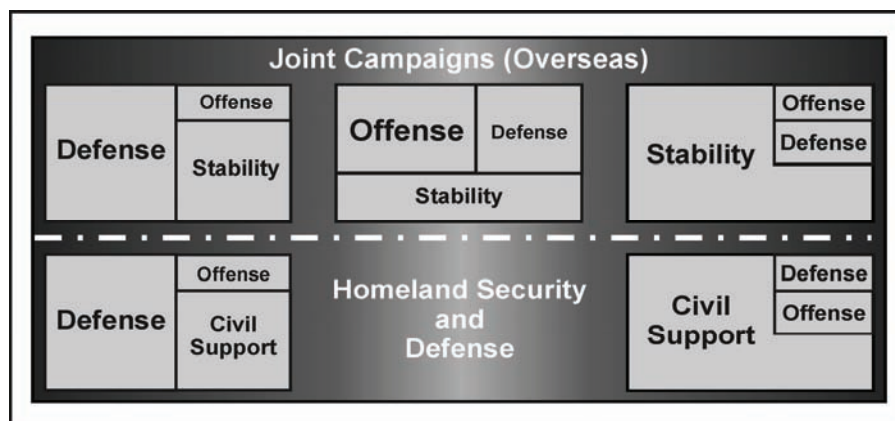


Figure 2-1. Full spectrum operations

2-4. Army forces use offensive and defensive operations to defeat the enemy on land. Simultaneously, Soldiers execute stability or civil support operations to interact with the populace 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 civil support tasks. However, an extreme emergency, such as an attack by a hostile foreign power, may require simultaneous combinations of offensive, defensive, and civil support 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, full spectrum operations equally weights tasks dealing with the population—stability or civil support—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 of full spectrum operations—offense, defense, stability, civil support—has its own doctrinal definition and its own particular legal issues. Because the elements of full spectrum operations are often conducted simultaneously, judge advocates prepare to provide legal support to operations across the spectrum of conflict.

2-7. Legal issues are prevalent in full spectrum operations and—with the exception of issues found in civil support operations—are discussed under the various operational themes. (See paragraphs 2-8 to 2-24.) Civil support 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 civil support 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 appendix F for a detailed discussion of legal issues frequently encountered in civil support operations.

OPERATIONAL THEMES

2-8. Army doctrine employs the concept of operational themes to describe the character of different Army operations. A major operation is a series of coordinated tactical actions to achieve strategic or operational objectives in an operational area. An operational theme describes the character of the dominant major operation at any time within an area. An operational theme helps convey the force the characteristics of an operation. It also influences the doctrinal and legal principles that govern its execution. As figure 2-2 indicates, the five operational themes range in intensity across the spectrum of conflict from peacetime military engagement to major combat operations. Operational themes are important to operational legal advisors because they affect a number of areas of the operational law practice, from fiscal law to the RUF and rules of engagement (ROE). The operational theme will affect the types of legal issues that judge advocates will confront during a given operation.

Note: Within the operational themes, the combinations of offense, defense, and stability operations are illustrative and in practice will vary considerably, depending on the situation.

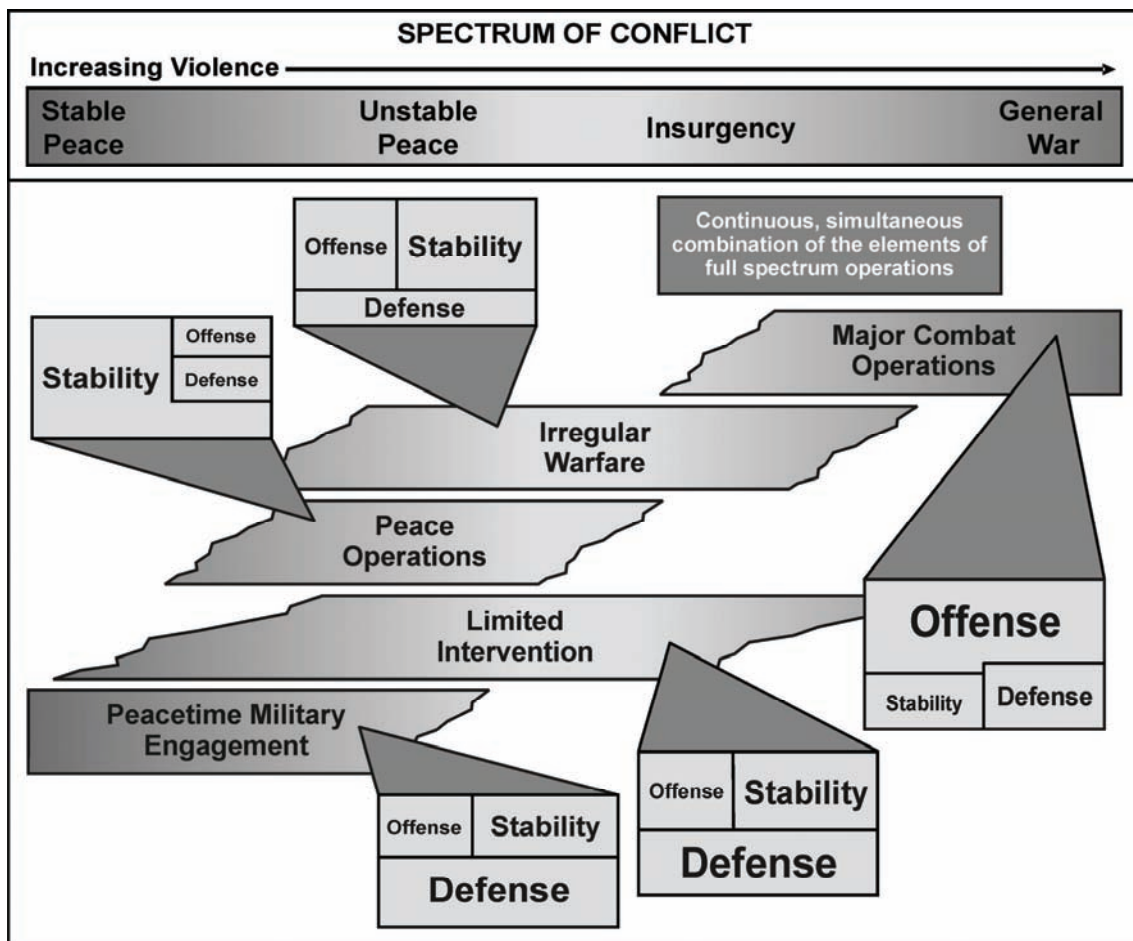


Figure 2-2. Operational themes

PEACETIME MILITARY ENGAGEMENT

2-9. Peacetime military engagement consists of operations and activities conducted by the United States in an effort to help shape the international security environment. Examples include exercises or training exchanges with other nations, security assistance operations, and other programs designed to promote stability and build closer ties with other nations.

2-10. Typically, peacetime military engagements are influenced and governed by policy, regulations, security cooperation agreements, and when applicable, host-nation law and status-of-forces agreements. These engagements are tremendously legally intensive in nature. Judge advocates must therefore take a proactive role in planning these engagements. Examples of joint military operations conducted within this operational theme include multinational training exercises, joint combined exchange training, security assistance, recovery operations, and counterdrug activities. 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. Judge advocates ensure commanders fully understand and account for these considerations during the planning of any peacetime military engagement.

2-11. United States military operations occurring outside the United States will invariably result in claims against the government. Claimants may include local residents, host-nation governments, and multinational forces. To ensure successful peacetime military engagements, U.S. forces must maintain positive relationships with all involved. Therefore, judge advocates ensure the planning phase of these operations includes preparations to process claims expeditiously and effectively until the statute of limitations expires.

2-12. Another legal issue less operational in nature, but also important in multinational environments, falls under the core discipline of administrative law. Peacetime military engagements, such as multinational cooperation exercises, generally involve numerous protocol events in which difficult issues arise involving the Joint Ethics Regulation. The exchange of gifts at ceremonies or at the conclusion of exercises is common. Commanders ensure all U.S. personnel are fully briefed on the requirements of the Joint Ethics Regulation to avoid potential embarrassing situations or violations of U.S. law. Most multinational partners do not have the same restrictive ethical limitations as those placed on Department of Defense personnel. As a result, multinational officers often give expensive gifts to U.S. commanders and key staff officers during official ceremonies or at the conclusion of exercises. If commanders do not contemplate such events in advance, what may appear to be a minor issue can lead to a cultural misunderstanding and insult that may ultimately thwart the purpose of the peacetime military engagement or violations of U.S. laws by senior officers.

2-13. Judge advocates must be well versed in the myriad of legal issues arising during peacetime military engagements. To ensure a successful operation, the judge advocate ensures that commanders properly consider these issues during the planning process and throughout all aspects of the military engagement.

LIMITED INTERVENTION

2-14. A limited intervention has a clearly defined purpose and a specified end state. As the name implies, these operations are limited in scope and, in principle, duration. Examples include foreign humanitarian assistance, consequence management, noncombatant evacuation operations, sanction enforcement, raids, strikes, shows of force, and elimination of weapons of mass destruction. Legal issues arising within a limited intervention will vary depending on the type of operation.

2-15. Operations requiring the use of force such as strikes, raids, sanction enforcements, and elimination of weapons of mass destruction, require judge advocates to understand the legal basis for the use of force and the impacts of legal authorities and limitations. Additionally, judge advocates must ensure all participants understand and incorporate applicable law of war provisions into clear, easily executed, legally and tactically sound ROE. See appendix A.

2-16. Some operations such as foreign humanitarian assistance and consequence management are heavily regulated by U.S. Federal law and aspects of international law that often dictate limits. In addition,

specialized units, such as civil affairs units, possess a specialty in conducting these types of missions. For more discussion regarding judge advocate roles in civil affairs units, see appendix E.

PEACE OPERATIONS

2-17. Peace operations encompass multiagency and multinational crisis response and limited contingency operations involving all instruments of national power. Peace operations include peacekeeping, peace enforcement, peacemaking, peace building, and conflict prevention. These operations contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and to facilitate the transition to legitimate governance.

2-18. Peace operations are generally conducted under international supervision and often under the sponsorship of the United Nations or another international organization. United States participation may occur unilaterally or as a part of a coalition. By their nature, peace operations and the laws that govern their execution are complex and legally intensive. Peace operations are often further complicated by the absence of the rule of law, gross human rights violations, collapse of civil infrastructure, and the presence of dislocated civilians. Commanders will therefore rely heavily on judge advocate support when performing a myriad of tasks associated with such operations.

2-19. In peace operations, judge advocates will encounter many of the same legal issues presented by both peacetime military engagements and limited interventions. However, they may be further complicated by additional challenges often associated with stability operations and the difficulties of establishing the rule of law in failed or failing states. For detailed discussions of legal aspects of stability operations and rule of law, see appendixes C and D.

IRREGULAR WARFARE

2-20. The term “irregular warfare” encompasses a broad array of conflicts in which the principal activities are foreign internal defense, support to insurgency, counterinsurgency, combating terrorism, and unconventional warfare. Generally, irregular forces are the most active in irregular warfare; however, regular forces may also be heavily involved, especially in counterinsurgencies. Irregular warfare generally avoids direct military confrontation, combining irregular forces with unconventional methods such as terrorism. It also typically occurs within and among the civilian populace. Convolved and controversial legal issues governed by combinations of U.S. Federal law, international law, and host-nation law often complicate irregular warfare. See FM 3-24 and FM 3-07.

2-21. Legal issues involved in irregular warfare are numerous and complex. In many irregular warfare operations, U.S. forces often participate in operations with host-nation consent and therefore 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. Another major legal issue to be considered in irregular warfare operations is fiscal law. Judge advocates understand how specific operations are funded and what bilateral or regional cooperation programs apply to their operation. Finally, judge advocates possess a thorough knowledge of the law of war and principles and laws governing detention operations. Further guidance regarding legal aspects of irregular warfare is found in appendixes A and B.

MAJOR COMBAT OPERATIONS

2-22. Major combat operations are conducted to defeat or destroy the enemy’s armed forces and to seize terrain. They occur in circumstances generally characterized as general war. Legal issues found in major combat operations are considered “traditional” operational law issues. Often legal issues involve law of war issues, legality of weapons, targets, tactics, and the treatment of enemy prisoners of war. Appendixes A and B discuss the legal issues most commonly encountered during major combat operations. Judge advocates must be proactive and heavily involved in the planning phase of all major combat operations. This participation ensures the applicable law of war is considered from the U.S. perspective as well as any

multinational partners. However, the tempo of major combat operations requires judge advocates to be thoroughly knowledgeable in the law of war as commanders and staffs rely on them to provide almost immediate law of war advice.

2-23. Effective judge advocates know each of the operational themes and understand how each creates its own set of unique legal issues. By thoroughly understanding these concepts, judge advocates provide effective operational law support and help the commander set the proper tone for the organization. For a detailed discussion of operational themes, see FM 3-0.

THE WARFIGHTING FUNCTIONS

2-24. 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 (FM 3-0). The warfighting functions are the basis of combat power. Commanders employ the warfighting functions to conduct full spectrum operations. 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 movement and maneuver, intelligence, fires, sustainment, command and control, 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 JAGC personnel address legal issues within and across the warfighting functions, they set the conditions for mission accomplishment.

MOVEMENT AND MANEUVER

2-25. The movement and maneuver warfighting function revolves around tasks and systems that move forces to achieve a position of advantage over 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.

2-26. 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 might ask—

- 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 noncombatant 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 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

2-27. The intelligence warfighting function involves those tasks and systems that help commanders understand the enemy as well as how other variables of an operational environment (political, military, economic, social, information, infrastructure, physical environment, time) are likely to affect operations.

2-28. 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 at the tactical level should begin their analysis with certain threshold questions:

- 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

2-29. The *fires warfighting function* is the related tasks and systems that provide collective and coordinated use of Army indirect fires, joint fires, and command and control (C2) warfare, including nonlethal fires, through the targeting process (FM 3-0).

2-30. 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. The following are suggested lines of inquiry and areas of emphasis for judge advocates analyzing the fires warfighting function:

- 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 standing 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?

SUSTAINMENT

2-31. 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 (FM 3-0). Sustainment is the provision of the logistics, personnel services (to include legal support), and health service support necessary to maintain operations until mission accomplishment.

2-32. Sustainment is the lifeblood of operations. Without sustainment—including health, legal, financial management, and all of 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 the 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.) Operational law practitioners 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 annex, 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 units located? Are there resource managers on brigades' staff? 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 civil assistance to non-U.S. personnel?
- Will U.S. forces be expected to ensure that civilians receive medical supplies, food, and other essential services?

COMMAND AND CONTROL

2-33. The *command and control warfighting function* is the related tasks and systems that support commanders in exercising authority and direction (FM 3-0). It involves acquiring and managing friendly information and directing and leading subordinates. The most important aspect of legal support to command and control is having a judge advocate who takes initiative, participates at the appropriate C2 nodes, and develops the trust of the staff.

2-34. The authorization for a mission directly impacts C2 and has considerable legal importance. In particular, C2 dictates which types of funds to expend and the purposes for which they may be used.

2-35. Soldier discipline is an integral component of the C2 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 participating in planning should ask the following questions:

- 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 steady state?

PROTECTION

2-36. The *protection warfighting function* consists of the related tasks and systems that preserve the force so the commander can apply maximum combat power (FM 3-0). Preserving and protecting the force allows commanders to maintain combat power. 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 force protection in domestic or permissive environments and in other "nonoperational" circumstances. See appendix A. Judge advocates ask the following questions about protection:

- 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 their ROE or RUF be synchronized with U.S. military ROE or RUF?

THE OPERATIONS PROCESS

2-37. While differing significantly in design and application, all operations follow the operations process. The *operations process* consists of the major command and control activities performed during operations: planning, preparing, executing, and continuously assessing the operation. The commander drives the operations process (FM 3-0). (See figure 2-3.) 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 command presence, and decide when and where to make decisions. Commanders drive the operations process through battle command—understand, visualize, describe, direct, lead, and assess. (See FM 3-0.)

2-38. Throughout the operations process, commanders synchronize forces and 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.

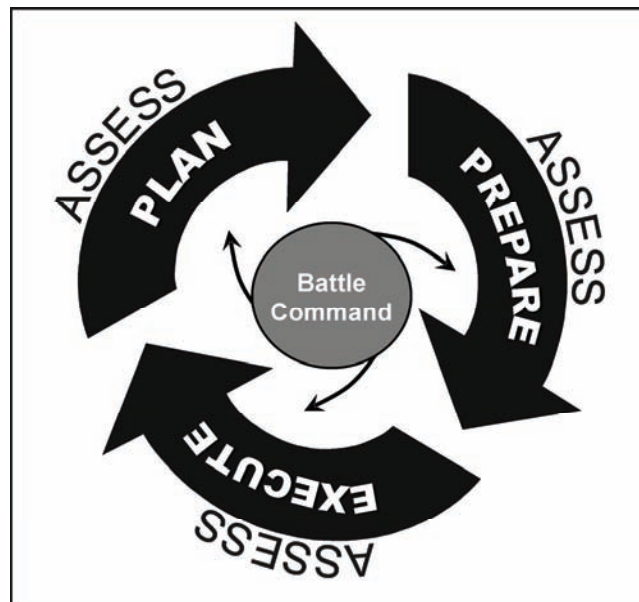


Figure 2-3. The operations process

2-39. Judge advocates are active in every aspect for the operations process. They remain attuned to the course of the operation and provide critical information. More than ever, full spectrum operations require informed legal support. As Army forces confront increasingly challenging and dynamic operating 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 operating environments. As a result, commanders recognize the value of personnel trained to spot legal issues related to offensive, defensive, stability, and civil support operations.

2-40. 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 full spectrum operations.

LINES OF OPERATIONS AND LINES OF EFFORT

2-41. Major combat operations are normally designed using lines of operation that define the directional orientation of a force in time and space. Stability and civil support 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 FM 3-0.)

2-42. In an operational design, lines of operations and lines of effort bridge full spectrum operations 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 full spectrum operations, the four 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.

2-43. 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 FM 3-0 to understand these operational concepts and learn the commander's language to participate in operations planning and to provide legal support to full spectrum operations along the lines of effort.

2-44. Judge advocates must understand the framework of full spectrum operations 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 full spectrum operations, 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.

MISSION COMMAND AND MISSION ORDERS

2-45. *Mission command* is the conduct of military operations through decentralized execution based on mission orders. Successful mission command demands that subordinate leaders at all echelons exercise disciplined initiative, acting aggressively and independently to accomplish the mission within the commander's intent (FM 3-0). Mission orders are instructions and directions that provide a broad concept for mission success but leave the details of execution to subordinate leaders.

2-46. Mission command and mission orders allow small-unit leaders and their subordinates to maximize their experience, judgment, and initiative to accomplish the mission. As such, they are particularly well suited to an operational environment where operations are often decentralized and flexibility is required to defeat an adaptive enemy.

2-47. Judge advocates and paralegal Soldiers supporting operations understand the concepts of mission command and mission orders because these principles significantly influence legal support to future operations. Two specific examples follow:

- As operations become more decentralized and more responsibility is vested in small-unit leaders, legal advice is required at lower levels of command. As a result, judge advocates and paralegal Soldiers will increasingly find themselves assigned or task-organized to smaller units and at lower levels of command.
- Today's battlefield is a noncontiguous environment where the tempo is incredibly rapid. In providing legal support to fast-moving, decentralized operations, judge advocates and paralegal Soldiers will rarely have the time or the means to seek detailed guidance from senior leaders on complex legal issues. Judge advocates often have to rely on their own expertise, intellect, and good judgment to provide timely, operational legal advice. They also have to empower paralegal Soldiers by giving them a proactive role in providing operational legal support.

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Chapter 3

Requirements in the Modular Force

This chapter provides an overview of the modular force concept that relates to the Army's ability to provide flexible and responsive functional capabilities to joint force commanders. It describes the new organizational structure of the Army and identifies where Judge Advocate General's Corps (JAGC) Soldiers will be assigned throughout this modular force. The redesign of the Army force structure will have a significant impact on legal operations across all core competencies. 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 have made significant changes to 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. asymmetric 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 command and control (C2) of its "parent" division—that is, 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 C2 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 that is independent of the standard C2 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. (See FMI 3-0.1.)

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 have a number of impacts on the JAGC. Although the brigade judge advocate serves as the legal advisor to the BCT commander and will normally be in his rating chain, the brigade judge advocate is always under the technical supervision of a superior Staff Judge Advocate (SJA), in accordance with Title 10, U.S. Code, section 806 (2000). SJAs and brigade judge advocates work together to foster productive technical-channel relationships and communications to provide 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 C2 and 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 utility of modular BCTs, there is an ongoing shift in responsibility for the delivery of legal support 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 component headquarters for a joint force (ARFOR); as a joint force land component headquarters; and then as a JTF. The division is the primary tactical warfighting headquarters for C2 of land force BCTs. In this role, it employs land forces as part of a joint, interagency, and multinational force conducting full spectrum operations. The division executes simultaneous offensive, defensive, and stability or civil support operations in an area of operations to establish specific conditions. It assigns tactical tasks and missions to BCTs, organizing decisive, shaping, and sustaining operations to accomplish its mission.

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 (TSC) and a support relationship with the division.

3-11. The Offices of the Staff Judge Advocate (OSJAs) at the division-level support and have oversight of subordinate brigade legal sections with which they may or may not have a traditional C2 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 diversity of areas of operation will impact

mission planning and conduct of operations. Division OSJAs bear the responsibility of helping brigade legal sections bridge capability gaps based on those differing challenges. For additional information on divisions, refer to FM 3-0 and FMI 3-0.1. Approved organic legal positions in the division SJA office are discussed in the Army force management system.

THE CORPS

3-12. The transformed modular Army corps headquarters is designed to operate, in order of priority, to command and control tactical Army forces, to leverage joint capabilities, and to command and control 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 C2 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 (movement and maneuver, intelligence, fires, sustainment, command and control, 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 strategic-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 3-0 and FMI 3-0.1. Approved organic legal positions in the division SJA office are discussed in the Army force management system.

THEATER SUSTAINMENT COMMAND

3-16. The TSC, provides sustainment planning, guidance, and support to forces in a theater of operation and is assigned to a theater army headquarters. A TSC is not a fixed organization and subordinate units are assigned, attached, or operational control based on the mission requirements. For additional information on theater sustainment commands, refer to FM 3-0 and FM 4-93.4. The Army force management system discusses approved table of organization and equipment legal positions in the TSC SJA office.

THEATER ARMY

3-17. The Army Service component command (ASCC) assembles and supports Army forces within the supported geographic combatant commander's (GCC's) area of responsibility and supports Army, joint, and other forces in that area of responsibility as required by the GCC. In almost all cases, the ASCC sustainment functions are executed by the theater army's TSC. Theater army is the doctrinal name for the ASCC of a GCC and is the primary vehicle for Army support to Army, joint, interagency, and multinational forces operating in the area of responsibility.

3-18. The ASCC integrates Army forces into execution of theater security cooperation plans as well. For additional information on ASCC, refer to FM 3-0 and FMI 3-0.1. The Army force management system discusses approved table of organization and equipment legal positions in the ASCC SJA office.

THE JUDGE ADVOCATE GENERAL'S CORPS MATERIEL REQUIREMENTS

3-19. Legal personnel are well equipped to be able to deliver timely legal support in garrison and during deployments. The most critical categories of equipment are legal automation, mobility, and communications.

AUTOMATION

3-20. The JAGC requires a dedicated system of automation to provide responsive legal services at all echelons of command. That system is the Legal Automation Armywide System (LAAWS). 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. LAAWS provides for standardized software throughout the JAGC and includes modules and databases for all core legal disciplines. LAAWS programs process, transmit, receive, and display essential information. Legal references compiled by LAAWS are available in compact disc and via databases on the Judge Advocate General's Corps Information Network (JAGCNet), a work group consisting of more than seventy computer servers and thousands of clients throughout the world. JAGC Soldiers use the LAAWS and JAGCNet to provide accurate and responsive operational legal services. JAGC Soldiers also require access to classified databases and information through the SECRET Internet Protocol Router Network. 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 prior to deployment rather than expect to be able to download them from the Internet once deployed.

3-21. 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 has 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

3-22. Legal personnel depend on the units to which they are assigned or attached for transportation. Separate legal organizations, such as legal support organizations or mobilization support organizations, require organic transportation assets. 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 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

3-23. The SJA delivers legal services throughout the area of operations. 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

3-24. 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.

Service

3-25. 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 counsels provide defense legal services to the units for which they are assigned responsibility or on an area basis. Defense counsel maintains the mobility to interview and consult with widely scattered clients and witnesses and to represent their clients before courts-martial and adverse administrative proceedings.

COMMUNICATIONS

3-26. Operations often occur in a 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, the subordinate commanders, the staff, and the SJAs at higher echelons. JAGC Soldiers utilize communications available within their commands, to include the Army Battle Command System, combat net radios, common-user networks, Army Data Distribution System equipment, and Broadcast System equipment. In addition, JAGC Soldiers have a dedicated digital sender to transmit critical, time-sensitive documents. These documents can be simultaneously scanned and e-mailed to any location.

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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 (JAGC) organizations and JAGC personnel assigned to the operating force. 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 JAGC 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 command and control may have changed, the JAGC's mission remains the same: provide proactive legal support on all issues affecting Army and joint forces and deliver quality legal services to Soldiers, retirees, and their families. 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 doctrine requires JAGC personnel to comply with the 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 operational environment. 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 and brigade staff with legal advice and support across the core legal disciplines.
- Provide the brigade commander and brigade staff with legal advice and support in full spectrum operations.
- Provide the brigade commander and brigade staff 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 the 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.

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 is a major who serves as the brigade commander's legal advisor and officer in charge of the brigade legal section. A trial counsel is a captain whose primary responsibility is to administer all military justice matters for the brigade combat team (BCT). 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). 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 BCT work under the direction and of the brigade judge advocate.

4-8. During deployments, a brigade legal section frequently requires augmentation to meet its mission requirements. 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 provide superior operational law coverage. 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 the commander and a Soldier in an adverse action. Administrative law support also avoids conflicts. For example, a judge advocate is needed to serve as a neutral 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. 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 BCT headquarters for training exercises and missions. The trial counsel will maintain a close working relationship with the BCT for both effective military justice support and deployments. Fostering this relationship may include participation in the BCT physical training program, BCT officer development, and other events. 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.

4-10. Though the SJA 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 4-20 through 4-33.)

4-11. The rating scheme for judge advocates assigned to brigades is in accordance with relevant Army regulations. Accordingly, the brigade judge advocate normally is rated by the SJA and senior-rated by the BCT commander. The trial counsel is rated by the brigade judge advocate, may be intermediate-rated by the brigade deputy commander or executive officer, and is senior-rated by the SJA. Judge advocates augmenting the brigade legal section normally share the same rating scheme as the trial counsel. The senior paralegal NCO is rated by the brigade judge advocate, senior-rated by the brigade deputy commander or executive officer, and reviewed by the brigade commander.

4-12. These rating schemes ensure that judge advocates receive both leadership and mentoring from their unit chain of command as well as professional guidance on the practice of law from a senior judge advocate. The rating schemes outlined herein are intended to achieve these goals while providing maximum flexibility to the brigade. Variations may be necessary, especially in a deployed environment. Each judge advocate assigned to a brigade should have another judge advocate in the rating scheme to ensure that unique professional matters are addressed in evaluations.

DUTIES AND RESPONSIBILITIES OF BRIGADE LEGAL SECTION PERSONNEL

4-13. Paragraphs 4-14 through 4-19 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

4-14. 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. 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

4-15. 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 BCT. The trial counsel

coordinates with law enforcement agencies on pending cases and investigations within the BCT. 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 BCT. 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 for training exercises or combat and contingency operations. The trial counsel also serves as the acting brigade judge advocate when the brigade judge advocate is absent.

Brigade Senior Paralegal NCO

4-16. 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

4-17. Paralegal Soldiers, E-1 through E-5, are assigned to the S-1 section of each subordinate battalion of a BCT or support brigade. 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 should be restricted to those of a legal nature.

4-18. Brigade judge advocates and brigade senior paralegal NCOs retain the flexibility to coordinate the consolidation of legal assets at the BCT and support brigade headquarters. The ability to consolidate legal assets varies based on available space within the headquarters, training requirements, and deployments. Brigade judge advocates and senior paralegal NCOs should strongly consider consolidation during periods of reduced paralegal strength to maximize the efforts of all legal personnel assigned to the BCT. Consolidation also 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. Consolidation of legal assets is coordinated with the brigade commander, executive officer, and command sergeant major.

Judge Advocate Augmentation

4-19. 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

4-20. 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

4-21. The OSJA performs the following tasks:

- Provide the commander and staff with legal support and advice in full spectrum operations.
- Advise the commander and staff on military justice, administrative separations, command policies, 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.

DUTIES AND RESPONSIBILITIES OF THE OFFICE OF THE STAFF JUDGE ADVOCATE

PERSONNEL

4-22. The senior leadership of the OSJA at the division, corps, and ASCC levels consists of the SJA, the deputy SJA, the legal administrator, and the command or chief paralegal NCO. Each senior leader has specific duties and responsibilities, but all four leaders work together to ensure that the OSJA is led, trained, equipped, and supported in a manner to accomplish the mission. 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 4-23 through 4-32 discuss each leader's responsibilities.

The Staff Judge Advocate

4-23. 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. The SJA is authorized to communicate with TJAG and other supervisory judge advocates of superior or subordinate commands as necessary.

4-24. 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. As a member of the commander's personal staff, the SJA communicates directly with the commander on all legal matters affecting the morale, good order, and discipline of the command. Additionally, the SJA is a member of the commander's special staff and hence under the general supervision of the chief of staff. 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.

4-25. The SJA will perform 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.
- 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.
- 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

4-26. 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

4-27. The legal administrator is an Army warrant officer with special training 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

4-28. 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 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.

Division Chief

4-29. Division chiefs are responsible for the mission success of their respective divisions within the OSJA. Typically, legal issues arising in each core legal discipline are addressed by a corresponding division within the OSJA. 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.

Civilian Attorneys

4-31. Civilian attorneys assigned to the OSJA may perform the same legal duties as judge advocates, except for advocating before courts-martial and administrative boards. 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.

Paralegal NCOs and Soldiers

4-32. 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.

4-33. 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

4-34. 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 the assignment of JAGC personnel directly to the BCTs. Though support and coordination issues may arise, both organizations focus on the same end state: mission accomplishment. 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

4-35. 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

4-36. 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 (2007). 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.

4-37. 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 technical guidance from the SJA is necessary. 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 that is not resident in the brigade legal section such as government contracting, ethics, or others.
- 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

4-38. 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 BCT. If a GCMCA details a BCT trial counsel to a court-martial or other justice matter 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

4-39. SJAs do not normally have the authority to impose training requirements directly on brigade legal section personnel working at the BCT headquarters. Nevertheless, OSJA leaders should take every opportunity to teach, coach, and mentor brigade legal section personnel on legal and professional subjects, and 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 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

4-40. 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, defend Soldiers in 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. 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.

4-41. 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, 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, therefore ensure that Soldiers of other branches understand the necessity of the USATDS mission.

4-42. 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.

4-43. 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 all defense counsel and the USATDS mission.

4-44. While in a reserve status, United States Army Reserve (USAR) regional and trial defense teams are assigned to defense legal support organizations. 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 USAR and ARNG trial defense teams and personnel fall under the operational control of USATDS.

4-45. 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'S BRIGADE LEGAL SECTION—U.S. ARMY TRIAL DEFENSE SERVICE RELATIONSHIP

4-46. 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. This support is specified by TJAG as essential to the performance of the defense mission. Paralegal support at the trial defense team level is especially critical to mission success. Trial defense team enlisted personnel authorizations 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.

4-47. All JAGC personnel are expected to advocate zealously on behalf of their clients. As such, disputes 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.

4-48. 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.

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 is responsible for the overall supervision and administration of military justice within the Army. Commanders are responsible for the administration of military justice in their units and communicate directly with their Staff Judge Advocates (SJAs) about military justice matters. There are three organizational components of military justice 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.

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

5-2. The SJA is responsible for military justice advice and services to the command. The SJA advises commanders concerning 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, and perform or supervise military magistrate functions. 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 and 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 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 jurisdiction 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. In both garrison and deployed environments, they assist the criminal law noncommissioned officer 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 the employment of expert witnesses testifying at courts-martial.

5-11. Paralegal NCOs and Soldiers manage and process evidence, 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. 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 international 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 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. 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.

5-19. 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; 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 targeting, with particular emphasis on ROE implementation. 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.

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.

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 between the operational law judge advocate, the command or chief paralegal NCO, the legal administrator, and other key personnel. It includes developing standing 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.

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

targeting, ROE, 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. Working with the command or chief paralegal NCO, they coordinate with staff elements and higher headquarters to ensure that the SJA office is properly manned, equipped, trained, and funded to support legal operations. Working with the command or chief paralegal NCO, 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 appendix D 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 primary 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. While aspects of intelligence law exist in all operations, it is particularly important in domestic activities.

5-29. Detainee operations law is comprised 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

5-30. Administrative law is the body of law containing the statutes, regulations, and judicial decisions that govern the establishment, functioning, and command of military organizations. Civil law is the body of law containing the statutes, regulations, and judicial decisions that govern the rights and duties of military organizations and installations with regard to civil authorities.

ADMINISTRATIVE LAW

5-31. The practice of administrative law includes advice to commanders and litigation on behalf of the Army involving many specialized legal areas. These specialized areas include military personnel law, government information practices, investigations, relationships with private organizations, labor relations, civilian employment law, military installations, regulatory law, intellectual property law, and government ethics.

5-32. Administrative law attorneys perform the following tasks:

- Advise commanders, review administrative actions, and litigate cases involving military personnel law.
- Advise Army officials regarding their obligations under the Freedom of Information Act and the Privacy Act.
- 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 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.
- 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.

5-33. 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.

5-34. During operations, administrative law attorneys prepare to spend considerable time and effort on command investigations, as these may significantly impact the unit and mission. They also supervise the government ethics program, including filing financial disclosure forms, even in a deployed environment.

5-35. Paralegal NCOs and Soldiers help judge advocates and civilian attorneys review and prepare legally sufficient documents including financial liability assessments, Freedom of Information Act requests, AR 15-6 investigations, and documents processed for release to ensure compliance with the Privacy Act. Additionally, 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

5-36. The practice of civil law includes environmental law and well as many other specialized areas of law. Environmental law is the body of law containing the 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. An environmental law attorney might perform the following tasks:

- 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.
- Monitor state and Federal environmental legislative and regulatory developments.
- Provide advice concerning the appropriateness of any environmental enforcement activities.
- Review all draft environmental orders, consent agreements, and settlements with Federal, state, or local regulatory officials before signature.

5-37. Prior to operations, environmental lawyers assist in the planning process by providing legal advice concerning environmental reviews and environmental requirements in the area of operations and by reviewing plans to ensure that they address environmental law and policy requirements. The environmental plan should address certification of local water sources, waste management, hazardous material management, protection of flora and fauna, archeological and historical preservation, the base field spill plan, and policies and responsibilities that protect the environment.

5-38. Environmental lawyers ensure that an environmental survey is completed to provide a baseline against which later claims for damage may be assessed. SJAs coordinate with the organization's environmental team and civil affairs section. SJAs liaise with the DOS country team and local environmental legal authorities.

CONTRACT AND FISCAL LAW

5-39. 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

5-40. The practice of contract law includes battlefield acquisition, contingency contracting, 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, 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.

5-41. 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.

5-42. Contract law advice may also be required at brigade or battalion headquarters, focusing mainly on simplified acquisitions, 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 contract law. Expertise may be required at the multinational command headquarters to give advice concerning international acquisition agreements.

5-43. Contract lawyers assist contract planning by identifying the legal authorities for contracting, obtaining relevant acquisition agreements or requesting their negotiation, helping the contracting team to define requirements and to establish procurement procedures for the operation, and reviewing the contracting support 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 DOS country team in 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.

5-44. Because contracting and fiscal issues will increase in number and complexity, SJAs plan for additional contract law and fiscal law support as operations progress. SJAs encourage the use of acquisition review boards since they promote prudent management of resources and proactive resolution of logistic support issues. See appendix G for more information on financial management and deployment contracting.

FISCAL LAW

5-45. 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

5-46. The Army claims program investigates, processes, adjudicates, and settles 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 preventing distractions to the operation from claimants, promoting the morale of Army personnel by compensating them for property damage suffered incident to service, and promoting good will with the local population. In short, this program provides compensation for personal injury or property damage caused by Army or DOD personnel.

5-47. Claims fall into three 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 acting within the scope of employment. Lastly is claims by the United States against individuals who injure Army personnel or their dependents or damage Army property. The Secretary of the Army heads the Army claims program.

5-48. The Judge Advocate General 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, and claims attorneys. 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. Area claims offices and claims processing 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.

5-49. 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.

5-50. Paralegal NCOs and Soldiers' duties include claim intake, investigation, adjudication, and carrier recovery. In the deployed environment, paralegal NCOs and Soldiers often run claim checkpoints or conduct claim convoys where they receive foreign claims for foreign nationals, investigate and adjudicate claims, and serve as claims paying agents.

5-51. 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 claims responsibility for the area. Claims attorneys should consult DOD Instruction 5515.08. U.S. personnel claims will normally be resolved by the parent Service. 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 services are centrally processed at these locations, claims personnel travel throughout the operational area to investigate, negotiate, and settle claims.

5-52. Commanders should appoint unit claims officers prior to deployments. Unit claims officers document and report incidents to claims offices that might result in a claim by or against the United States. The SJA and the chief of claims should develop the claims procedures for the operation and provide training for claims attorneys, legal specialists, 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.

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 method by which personnel claims will be paid. Although commanders on some deployments requested payment by cash to Soldiers in theater of operations, Defense Finance and Accounting Service did not approve these payments. An effective system of payment by electronic fund transfer is in place and used. 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; with the civil affairs staff to facilitate liaison with local officials, to learn about local customs, and to provide civil affairs and financial management personnel information about claims procedures; and 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 family members, 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. From an operational standpoint, a critical aspect of the legal assistance

mission is to ensure that the Soldiers' personal legal affairs are in order prior to deployment. 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, Soldier readiness processing, noncombatant evacuation operations—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, preparing powers of attorney and other legal documents, and, under the supervision of a judge advocate, providing income tax assistance, managing electronic filing of income tax returns, and providing 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 for legal assistance augmentation on Reserve Components legal units and attached personnel supporting the deployment. Support also may be provided by the senior defense counsel, who may assign trial defense counsel to provide legal assistance consistent with the trial defense mission and policies. The garrison or higher headquarters' legal assistance office may also serve as a reachback resource for deployed legal assistance attorneys.

Chapter 6

Planning

This chapter outlines the basics of planning and the seven steps of the military decisionmaking process (MDMP). It highlights the importance of integrating Judge Advocate General's Corps (JAGC) 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 JAGC 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 paralegal Soldiers participate in all phases of planning. Planning is the process by which subordinate commanders and support staff translate the commander's visualization into a 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, 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 the MDMP and a basic understanding of Army operations and legal issues attendant to each type of operation. This chapter looks at how staffs plan operations and discusses the role of JAGC Soldiers during planning.

6-3. Planning cells vary in size and composition depending on the size of the unit, the level of command, the time available for planning, and the complexity of the mission or operation. At brigade level and above, the planning staff will normally include, at a minimum, representatives from the following staff sections: intelligence, operations, logistics, fire support, signal, aviation, engineer, legal, chaplain, surgeon, and public affairs.

6-4. When an operation is particularly complex, or when the unit or units executing the operation are supplemented or augmented with additional forces, it is not uncommon to see the planning staff grow in size and composition. For example, in many cases a staff will be augmented with individuals who have a particular expertise in a subject area critical to the success of the operation. This staff augmentation might include experts in civil affairs, special operations, weather, or space operation. Likewise, when a unit is directed to operate with other units, other Services, or forces from multinational partners, the planning staff will normally be augmented with liaison officers from these organizations.

THE PLANNING PROCESS

6-5. 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 3-0 for more details.)

6-6. 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.

6-7. 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.

6-8. 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.)

THE MILITARY DECISIONMAKING PROCESS

6-9. 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.)

6-10. 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

6-11. 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 standing 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 or plan.
- Map of the area of operations.
- Appropriate field manuals.
- Any existing running estimates (to include legal estimates).

6-12. 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 Library. [**Note:** This resource may be obtained by e-mail request to CLAMO@hqda.army.mil.]

6-13. 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 as a member of the commander's staff they do not allow legal issues to 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

6-14. 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.

6-15. Mission analysis is conducted in terms of factors off 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.

6-16. 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

6-17. 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: COA ANALYSIS (WAR-GAMING)

6-18. The intent of COA analysis is to identify COAs that will accomplish the mission with a minimum of friendly casualties and best position the force for follow-on operations. 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 operational environment. 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: COA COMPARISON

6-19. After the COAs are developed, they are compared. When necessary, judge advocates participate in the COA brief to the commander, outlining critical legal issues in each COA.

STEP 6: COA APPROVAL

6-20. At the conclusion of the COA 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

6-21. 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 additional legal issues are identified after the base order is published, judge advocates address them in subsequent fragmentary orders.

6-22. Judge advocates and paralegal Soldiers 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.

Appendix A

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

This appendix discusses rules of engagement (ROE), rules for the use of force (RUF), and targeting—three critically important areas for Judge Advocate General's Corps (JAGC) Soldiers assigned to operational units. Because ROE, RUF, 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

A-1. *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 1-02).

A-2. ROE are a critically important aspect of military operations. They contribute directly to mission accomplishment, enhance protection, and help ensure compliance with law and policy. While ROE are ultimately commanders' rules for the use of force, JAGC personnel nonetheless remain involved in ROE drafting, dissemination, interpretation, and training.

A-3. ROE help commanders accomplish the mission by regulating the RUF. 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.

A-4. 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. 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.

STANDING RULES OF ENGAGEMENT

A-5. The keystone document in the area of ROE is CJCSI 3121.01B. It provides the baseline ROE, known as the standing rules of engagement (SROE), for U.S. forces responding to attacks within the U.S. or performing military operations outside the U.S., as well as the standing rules for the use of force (SRUF) for U.S. forces in domestic or permissive environments. 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.

A-6. The SROE 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.
- Enclosures L through Q – SRUF. 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.

A-7. The SROE also contain technical definitions of self-defense:

- Inherent right to self-defense.
- National self-defense.
- Collective self-defense.

A-8. 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.

A-9. National self-defense includes the defense of U.S. forces, and in certain circumstances, U.S. persons and their property, U.S. commercial assets, or both from a hostile act or a demonstration of hostile intent.

A-10. In collective self-defense, U.S. forces defend designated nonmilitary forces, designated foreign nationals and their property, or both 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

A-11. 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 are nested 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.

A-12. 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

A-13. 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 they cannot be understood by Soldiers or applied by Soldiers under pressure.

A-14. 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 illustrates 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.

A-15. Effective ROE do not assign specific tasks or drive specific tactical solutions; they allow a commander to convey quickly and clearly a desired posture regarding the rules for the use of force to subordinate units. Commanders at all levels continually review the ROE to ensure their effectiveness in light of current and projected conditions in their operational area.

SITUATIONAL CONSIDERATIONS

A-16. In any given operational environment, commanders determine how best to accomplish the mission in light of the conditions, circumstances, and influences that affect a specific operation. At the operational and tactical levels of conflict, commanders and staffs analyze, in detail, all relevant aspects of their operational environment. The most comprehensive framework for this analysis is the eight operational variables: political, military, economic, social, information, infrastructure, physical environment, and time (for which the memory aid is PMESII-PT). Often, during the mission analysis step in the military decisionmaking process, the acronym METT-TC—mission, enemy, terrain and weather, troops and support available, time available, civil considerations—will be used as a checklist or memory aid to help remind planners of the critical factors they must consider.

OPERATION-SPECIFIC VERSUS STANDING RULES OF ENGAGEMENT

A-17. 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 Iraqi Freedom—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

A-18. 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.

A-19. Hostility criteria provides 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.

A-20. 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 a riot stick, or perhaps firing an aimed warning shot. 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.

A-21. Rules for protection of property and foreign nationals detail what and who may be defended with force aside from the lives of U.S. Soldiers and citizens. They include measures that Soldiers and citizens can take to prevent crimes in progress or the fleeing of criminals.

A-22. 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.

A-23. Rules for observed indirect fires require that one or more persons or electronic means observe an indirect fire target.

A-24. 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 operations map overlays.

A-25. 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.

A-26. 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

A-27. 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 advocates coordinate 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

A-28. 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 may emanate from the Chairman of the Joint Chiefs of Staff or the Secretary of Defense. 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.

A-29. 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, standing 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 details knowledge of the military operations and staff organization and procedures to gather information from those who can provide additional needed facts.

A-30. 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

A-31. 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.

A-32. At theater and joint task force levels, the drafting of ROE results in Appendix 8 (Rules of Engagement) to Annex C (Operations) of the OPLAN or OPORD. At corps, division, and BCT level, the drafting of ROE results in Annex E 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. Standing 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.

A-33. The drafting of ROE in the context of multinational operations presents additional challenges. The SROE state that U.S. forces operational control (OPCON) by a multinational force will follow the ROE of the multinational force unless otherwise directed by the President or Secretary of Defense. The SROE further state that U.S. forces will be assigned and remain OPCON to a multinational force only if the combatant commander and higher authority determine that the ROE for that multinational force are consistent with the policy guidance on unit self-defense and with the rules for individual self-defense contained in this document. When U.S. forces under United States' OPCON operate with a multinational force, reasonable efforts will be made to establish common ROE. If such ROE cannot be established, U.S. forces will exercise the right and obligation of self-defense contained in the SROE while seeking guidance from the appropriate combatant command.

A-34. 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 signatories 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 signatories 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.

A-35. 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.

A-36. 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 will 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 amount of time available may dictate both what force options to and what preparations to make to implement a particular rule. The presence or absence of civilians will inevitably raise questions about whom friendly forces can protect under ROE.

A-37. Judge advocates push upward on the drafting process. SROE provides the means to request supplemental ROE. Use such requests. If the METT-TC suggests a ROE that is not contained in the higher headquarters annex, push a suggested rule up to the higher headquarters for approval. Keep in mind, however, that the SROE are permissive.

A-38. Judge advocates avoid restating strategy and doctrine. ROE should not be used as the means to set forth strategy or doctrine. Often, less experienced judge advocates attempt to use the ROE annex to complete a task for which an entire system exists in Army doctrine.

A-39. 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.

A-40. Judge advocates avoid restating tactics. Sometimes the purposes of ROE (political, legal, military) are sometimes 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.

A-41. 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.

A-42. 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

A-43. 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

A-44. 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.

A-45. When preparing for peacekeeping or disaster relief missions, commanders plan for Soldiers to use greater constraint and discipline than in offensive or defensive operations. ROE training should always include situational training. This 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

A-46. SRUF establish fundamental policies and procedures governing the actions U.S. commanders and their forces follow during all civil support operations and routine military department functions occurring in the United States and its territories. SRUF also apply to ground 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. It also applies to duties off-installation while conducting official DOD security functions, within or outside U.S. territory, unless otherwise directed by the Secretary of Defense. While ROE are used primarily to govern the use of force in a mission, RUF

apply in domestic or permissive foreign environments with a functional civil government. 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.

TARGETING

A-47. Judge advocates play a critically important role in targeting. As subject matter experts on the law of war, ROE, and the protection of noncombatants, they provide commanders with essential input on plans, directives, and decisions related to lethal and nonlethal targeting. Judge advocates are part of targeting cells 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

A-48. 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 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 6-20-10 and CJCSM 3160.01B for more information.

A-49. 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 6-20-10 discusses each of these steps.

A-50. 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 operation plan. Judge advocates attend all planning sessions, provide direct input into the decisionmaking processes, and introduce relevant operational law considerations into the targeting processes.

DEPLOYMENT

A-51. Once deployed, judge advocates are included in the 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.

A-52. 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 targeting visual model in Figure A-1 may help judge advocates to assess targeting decisions accurately and thoroughly.

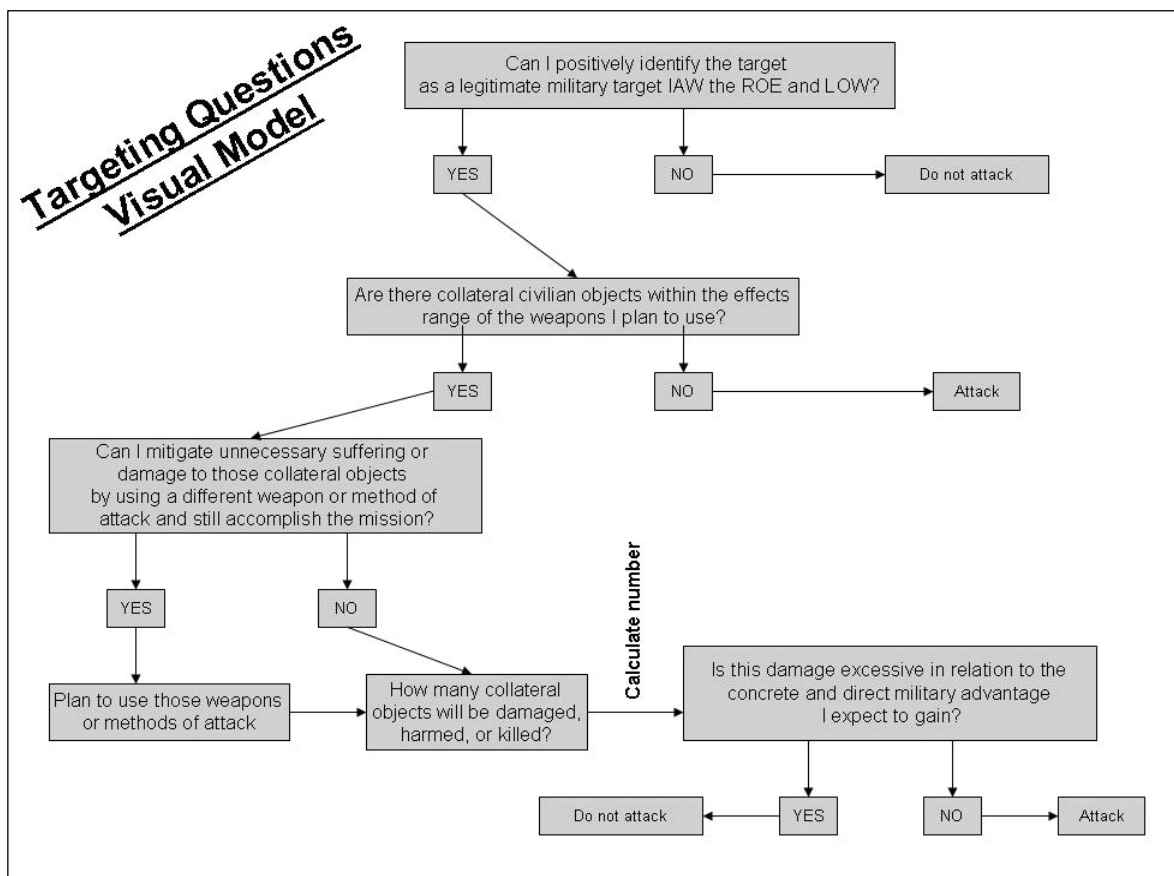


Figure A-1. A sample targeting decision model

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Appendix B

Detainee Operations

This appendix 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

B-1. During military operations, U.S. forces will detain people. A *detainee* is defined as 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 the Geneva Conventions, as an enemy prisoner of war (EPW), a civilian internee, a retained person, a potential enemy combatant, or another detainee. International law confers certain legal rights to detainees depending upon which status they hold.

B-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 appendix C and appendix D for more information.)

B-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 civil support operations. Internment and resettlement operations are part of the sustainment warfighting function.

B-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 that are 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.

B-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 will allow judge advocates to recognize prohibited conduct and provide relevant advice to commanders and Soldiers on interrogations.

THE JUDGE ADVOCATE'S ROLE IN DETAINEE OPERATIONS

B-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.

B-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 from mortars).
- Soldiers assign detainees an internment serial number.
- 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. A tribunal convened pursuant to the Geneva Conventions may be required to make the determination.
- Those detainees who lack enemy prisoner of war status will have their detention reviewed periodically by competent authority. (See DODD 2310.01E.)
- Interrogations are defined as a systematic effort to procure information by direct questioning of a person under the control of the questioner. Commonly, this is thought of as questioning with the use of authorized intelligence questioning approaches. Only trained, qualified interrogators may interrogate detainees. (See JP 3-63.)
- Tactical questioning is direct questioning by any DOD personnel of a captured or detained person to obtain time-sensitive tactical intelligence at or near the point of capture or detention

and consistent with applicable law. Typically, this is thought of as questioning without the use of planned intelligence approaches. (See JP 3-63.)

- Soldiers are not authorized to “soften up” detainees or to “set the conditions for interrogations.”
- All Soldiers, regardless of rank or specialty, have a moral and legal duty to report detainee abuse.

THE GENEVA CONVENTIONS

B-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 Geneva Conventions in all military operations, no matter how characterized, unless otherwise directed by competent authority. 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).

B-9. The Geneva Convention (I) 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.

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

B-11. The Geneva Convention (III) 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.

B-12. The Geneva Convention (IV) 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

B-13. Generally, a detainee falls within the following categories: enemy prisoner of war, civilian internee, retained person, or other detainee. They do not include persons being held primarily for law enforcement purposes, except where the United States is the occupying power. A detainee may also fall into the following categories:

- Enemy combatant.
 - Lawful enemy combatant.
 - Unlawful enemy combatant.
- Enemy prisoner of war.
- Retained person.
- Civilian internee.

B-14. 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.”

B-15. The Military Commissions Act of 2006 defines lawful enemy combatants as members of the regular armed forces of a State engaged in hostilities against the United States; a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged 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; or a member of a regular armed force who professes allegiance to a government engaged in hostilities but not recognized by the United States. Lawful combatants are afforded combatant immunity.

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

B-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 (FM 1-02).

B-18. A retained person consists of enemy medical personnel and 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.

B-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

B-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 short, 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.

Note: Section 1003(a) is not limited solely to the DOD and that it includes the entire U.S. government.

Appendix C

Stability Operations

OVERVIEW

C-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 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.

C-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 this in more detail.)

C-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.

C-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.

C-5. The emphasis on conflict transformation recognizes that U.S. forces frequently conduct stability operations concurrently 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. 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 similarly require a flexible approach to conducting a mix of stability, offensive, and defensive operations.

C-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. Appendix D describes the rule of law in detail.

C-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 JAGC PERSONNEL

C-8. Just as stability operations are not fundamentally different in kind from other types of operations, the roles of JAGC personnel in stability operations are not fundamentally different 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 JAGC TASKS

C-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 in the form of international, U.S. domestic, and HN legal obligations and norms.

C-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. Appendix D discusses rule of law in detail.

C-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 all 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 will frequently require specific ROE that are more restrictive and detailed when compared to those for sustained combat operations. (FM 3-0 discusses these ROE.) Moreover, to be legitimate, such ROE need to comply with both international and (depending on the type of stability operation) existing HN law.

C-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.)

C-13. Because stability operations involve engagement of the HN population in constructive relationships, JAGC personnel should 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 do a great deal to increase good will by being responsive 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 would increase.

C-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 will be required to examine projects for compliance with those restrictions. (Paragraphs C-26 through C-33 discuss those restrictions in more detail.)

C-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 in need of stability operations. Frequently, stability operations will be conducted 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 should prepare to increase the work they do to interface with such organizations.

C-16. Modern stability operations involve many Department of Defense (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 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 operational environment in which stability operations normally occur. Coordination with the responsible contracting officer is essential. DOD directives contain further policy and guidance pertaining to civilians accompanying U.S. forces during operations

C-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.

JAGC TASKS SPECIFIC TO STABILITY OPERATIONS

C-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. The primary stability tasks are:

- Establish civil security.
- Establish civil control.
- Restore essential services.
- Support to governance.
- Support to economic and infrastructure development.

C-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.

C-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.

C-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.

C-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.

C-23. Support to economic and infrastructure development, like restoring essential services, is likely to 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.

C-24. Chapter 3 of FM 3-07 details the primary stability tasks along with descriptions of the many subtasks.

C-25. 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

C-26. Stability operations affect many areas of the operational environment, 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

C-27. 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.

C-28. Congress specifically appropriates funds for foreign assistance. The United States Agency for International Development expends such funds under the legal authorities in Title 22. 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

C-29. 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 police by U.S. forces is permitted but not with the DOD as the lead government department.

GENERAL PROHIBITION ON ASSISTANCE TO POLICE

C-30. 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 Bush signed a decision directive granting the commander, United States Central Command, authority to train and equip Iraqi police.

TRAINING AND EQUIPPING FOREIGN FORCES

C-31. All training and equipping of foreign security forces are 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

C-32. In stability operations, like all operations, commands 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

C-33. 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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Appendix D

Rule of Law

This appendix addresses rule of law activities and the issues related to rule of law activities in which judge advocates may become involved.

OVERVIEW

D-1. Many activities conducted in rule of law activities involve the practice of law and, therefore by statute, are performed by judge advocates or other attorneys under the statutory technical supervision of The Judge Advocate General. Judge advocates may be required to perform activities outside of the practice of law simply because of their familiarity with legal systems generally. It is likely that judge advocates will not be able to anticipate the roles they will fill prior to deployment.

D-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 3-0 and 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.

D-3. 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.

D-4. To ensure the full range of rule of law considerations in military planning and execution, judge advocate rule of law activities ultimately contribute to bringing about a situation in which the rule of law exists. *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).

D-5. 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.

D-6. 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 D-5. The phase of operations determines which rule of law activities is 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.

D-7. 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 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. Normally, such 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 local level should be coordinated with the rule of law country team.

D-8. Rule of law activities relate to both U.S. and HN policies. Such policies are established by either higher headquarters or civilian agencies in both the U.S. and HN governments. In addition, the Department of State will likely to 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.

D-9. 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.

RULE OF LAW ACTIVITIES INVOLVING THE PRACTICE OF LAW

D-10. Judge advocates who fall under the statutory technical supervision of The Judge Advocate General are the only persons authorized to provide legal advice regarding rule of law planning and activities. Judge advocates also perform or supervise all rules of law activities that involve the practice of law. At all levels, staff judge advocates are prepared to carry out rule of law activities. They coordinate activities of judge advocates assigned or attached to subordinate commands, specialists in public safety with a background in law enforcement, and others with backgrounds in judicial administration, corrections, and other relevant areas. Judge advocates are routinely detailed to work with interagency, multinational, or other organizations carrying out rule of law activities. The staff judge advocate has personnel available for rule of law activities with extensive training in international law, comparative law, and human rights law.

D-11. Rule of law activities involving the practice of law include, but are not limited to—

- Determining which HN offices, ministries, or departments can legally evaluate, reform, and implement the law and execute its mandates.
- 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 in light of international legal obligations and human rights standards and providing assistance to improve training. This training is given to HN judges, prosecutors, defense counsel, legal advisors, court administrators, and police and corrections officials.
- When necessary, serving as legal advisors for transitional courts.
- Advising commanders and others on the application of international, U.S. domestic, and HN law that is 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.
- Support the training of U.S. personnel in the HN legal system and traditions.

D-12. Judge advocates engaging in rule of law activities should consult current civil affairs doctrine for additional guidance. (See FM 3-05.40.)

CONSIDERATIONS IN RULE OF LAW ACTIVITIES

D-13. Judge advocates are likely to become involved in rule of law activities in both support and operational roles. Sometimes, depending on the security, civilian subject matter experts provided by the Department of State and other agencies may not be present. In such cases, the military conducts rule of law activities. When conducting rule of law activities, judge advocates coordinate with, and should seek advice from other cells within their organization that engage in similar operations. These organizations can include the operations cell, the planning cell, the civil affairs cell, and military police.

D-14. Ideally, civil affairs personnel coordinate and lead rule of law activities. Some judge advocates may be members of civil affairs units and serve either in staff positions or as subject matter experts on the rule of law. When in such positions, judge advocates often rely on established civil affairs doctrine and training; other judge advocates may be members of non-civil affairs units supporting rule of law activities led by civil affairs units. Occasionally, civil affairs resources will be unavailable or inadequate. In such cases, judge advocates may be required to serve in operational roles, conducting rule of law activities with little outside guidance or assistance.

D-15. 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.

D-16. 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, frameworks already tailored to specific HN legal systems will be available and should be relied upon in planning rule of law activities.

D-17. 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.

D-18. Because rule of law activities rely so highly on the operational environment, they are not amenable to checklist solutions. Even established frameworks need to be adapted to be useful when assessing the operational environment.

D-19. 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.

D-20. 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, 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.

D-21. 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 such as courts, police, and prisons).

D-22. Planning factors affecting of rule of law activities may include but are not limited to:

- The need to restore 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—courts, police stations, public records facilities, and prisons. Doing this as soon as possible minimizes the damage to those institutions and helps expedient reconstruction.
- 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.

D-23. 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 FM 3-24 and FM 3-07.)

D-24. 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.

Appendix E

Legal Support in Civil Affairs Units

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

OVERVIEW

E-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. CA organizations play a critical role in these relationships.

E-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.

E-3. The modular force structure includes one active Army and eight reserve CA brigades and four 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 appendix only), and a paralegal noncommissioned officer. In addition to the CJA and paralegal positions, CA commands also have judge advocate billets in each of their “functional specialty teams.” There are six of these teams in each of the four CA commands: three rule of law teams and three governance teams per command.

E-4. The authority to provide legal services rests solely with judge advocates and civilian attorneys under The Judge Advocate General’s supervision. CJAs provide legal advice to commands; other attorneys, regardless of branch or unit of assignment, may not provide legal services.

DUTIES AND RESPONSIBILITIES

E-5. 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.

E-6. In a deployed environment, the CJA provides the commander with expertise and insight on the legal aspects of civil affairs activities. 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 advice and expertise to commanders conducting activities in six functional specialty areas: rule of law, economic stability, governance, health and welfare, infrastructure,

and education and public information. 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 3-05.40.

E-7. 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.) Effective communication 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.

E-8. Judge advocates 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 ACTIVITIES

E-9. *Civil affairs activities* are activities performed or supported by civil affairs that (1) enhance the relationship between military forces and civil authorities in areas where military forces are present; and (2) involve application of civil affairs functional specialty skills, in areas normally the responsibility of civil government, to enhance conduct of civil-military operations (JP 3-57). CA forces plan, support, execute, or transition these military activities 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. These activities may be conducted through, with or by the indigenous population and institutions, intergovernmental organizations, nongovernmental organizations, or other government agencies. The five core tasks of CA activities are:

- Population and resource control.
- Foreign humanitarian assistance.
- Civil information management.
- Nation assistance.
- Support to civil administration.

E-10. CA activities contain a number of unique legal and cultural issues. Accordingly, judge advocates assigned to CA units have a broad base of knowledge. The following list outlines many of the major duties and responsibilities of judge advocates 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.
 - Psychological 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.

E-11. 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 appendix D.

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Appendix F

Civil Support Operations

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

OVERVIEW

F-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. *Civil support* is Department of Defense support to U.S. civil authorities for domestic emergencies, and for designated law enforcement and other activities (JP 3-28). Civil support 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 civil support 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, JAGC personnel should integrate themselves into the planning process to ensure plans staff properly account for the parameters set forth by U.S. laws and Department of Defense directives. In so doing, these legal restrictions will serve as critical screening criteria during course of action development, analysis, comparison, and approval.

THE POSSE COMITATUS ACT

F-2. 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 Title 10, U.S. Code, section 1385 (1878), 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 more than \$10,000 or imprisoned not more than two years or both.

F-3. Although a plain reading of the Posse Comitatus Act reflects that it only applies to the Army and Air Force, Title 10, U.S. Code, section 375 (2004) 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 Title 10, U.S. Code, section 375 (2004) and resulting Department of Defense (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 status. The applicable DOD directives are as follows:

- DODD 3025.15, *Military Assistance to Civil Authorities.*
- DODD 5525.5, *DOD Cooperation with Civilian Law Enforcement Officials.*

- DODD 3025.12, *Military Assistance for Civil Disturbances*.
- DODD 3025.1, *Military Support to Civil Authorities*.

F-4. 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).

F-5. 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 the following three statutory frameworks:

- Title 10.
- Title 32.
- State active duty.

F-6. 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.

F-7. When in a Title 32 status, National Guard personnel are federally funded and typically perform training for their Federal mission 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.

F-8. 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.

F-9. 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.

F-10. Posse Comitatus Act restrictions applying to the Federal military personnel through Title 10, U.S. Code, section 375 (2004) and implementing directives (see DODD 5525.5) 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.

F-11. Title 10, U.S. Code, sections 371–382 (2004) and DOD directives allow various forms of indirect assistance to civilian law enforcement agencies such as the following:

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

F-12. DODD 5525.5, Enclosure 4, states that the following forms of direct assistance are not prohibited by the Posse Comitatus; therefore, they are considered exceptions to the Act:

- Action 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 the following:
 - 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 inherent right of U.S. Government to ensure preservation of public order and carry out governmental operations within its territorial limits. This authority may be used in two circumstances:
 - In emergency to prevent loss of life or wanton destruction of property and restore governmental functioning and public order to such an extent that duly constituted local authorities are unable to control the situation.
 - Protection of Federal property and functions when need exists and duly constituted local authorities are unable or decline to provide adequate protection.
- Actions taken pursuant to insurrection statutes (Title 10, U.S. Code, sections 331–334) (2006). 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.

DISASTER RELIEF

F-13. The Robert T. Stafford Disaster Relief Act (Title 42, U.S. Code, sections 5121–5204c et seq. [2000], as amended) is the statutory authority for Federal disaster assistance within the United States and its territories. The Stafford Act authorizes the President to provide DOD assets for the relief efforts. Once the President formally declares an emergency or a major disaster, DOD assets for emergency work may be provided on a limited basis prior to the Presidential declaration. Disaster relief pursuant to the Stafford Act is not an exception to the Posse Comitatus Act; therefore, only indirect assistance is authorized unless direct assistance is otherwise authorized by the Constitution or statute. DOD policy for providing disaster assistance (as related to the Stafford Act) is contained in DODD 3025.15 and DODD 3025.1.

RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE

F-14. The standing rules of engagement (SROE) and standing rules for the use of force (SRUF) assist U.S. forces in determining which level of force to apply in a given situation. CJCSI 3121.01B discusses SROE and SRUF.

F-15. SROE apply domestically only to air and maritime homeland defense functions conducted within the U.S. territory or territorial seas. Otherwise, it applies during all military operations and contingencies and routine Department of Defense functions occurring outside U.S. territory and outside U.S. territorial seas.

F-16. SRUF are located at Enclosures L–Q of CJCSI 3121.01B. SRUF apply during all DOD civil support and statutory military department functions occurring within U.S. territory and territorial seas. SRUF also apply to land homeland defense missions occurring within the U.S. territory and to U.S. forces, civilians, and contractors performing law enforcement duties at all DOD installations (and off-installation while conducting official DOD security functions), within or outside U.S. territory, unless otherwise directed.

F-17. A commander's authority to modify the SROE and SRUF is limited to making them more restrictive. The rules for the use of force (RUF) and rules of engagement of the National Guard serving in a state-controlled Title 32 or state active duty status are governed by state laws. The various states' laws vary in the National Guard's authority to take actions requiring RUF in a law enforcement, law enforcement

support, or security operation. 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. It is the duty of the National Guard judge advocate to tailor the RUF to the particular mission and policies of the state.

Appendix G

Financial Management and Deployment Contracting

This appendix addresses the issues related to financial management and expeditionary contracting in which judge advocates may become involved.

OVERVIEW

G-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 a triad of sustainment assets—finance, resource management, and contracting (the “fiscal triad”). This fiscal triad is required for the local procurement of goods and services and for support of special programs. Fiscal triad assets operate in concert to execute local purchases of supplies. Judge advocates should establish contact with financial managers early in deployment.

FINANCIAL TRIAD

G-2. The financial triad comprises the finance manager, resource manager, and contracting agent. Each member of the triad has specific authorities and responsibilities in this process and is interdependent on the others. Triad interdependence provides a check and balance. It ensures commanders have sufficient support in accordance with established priorities. This interdependence also ensures judge advocates meet all legal and regulatory requirements and set adequate controls in place to prevent fraud, waste, and abuse.

FINANCE MANAGER

G-3. The finance manager acts as the government banker. It is the only triad element with disbursement authority. It provides vendor payment support through cash, check, and electronic fund transfers as well as funds and clears paying agents.

RESOURCE MANAGER

G-4. The resource manager is the commander’s representative to lead the requirement validation (including important appropriation legal reviews) and prioritization development effort. This manager certifies the availability of funds and ensures the use of funds is legal and proper. As the keeper of the commanders’ checkbook, the resource manager does not create requirements and has no procurement or disbursement authority.

CONTRACTING AGENT

G-5. The contracting agent is the only authorized (warranted) procurement agent legally capable of entering the U.S. Government into a contract. Contracting often conducts legal reviews prior to the award of a contract. However, it does not create or validate requirements and has no fund certification or disbursement authority. Often, the legal reviews are limited to contract sufficiency, not appropriation determinations.

G-6. At a minimum, judge advocates at all command levels provide proactive advice on early identification of funds authorized for the operational area and thoroughly understand fiscal law. Financial managers are involved in many Department of Defense (DOD) and non-DOD authorities; each manager has an individual set of regulations.

DEPLOYMENT CONTRACTING

G-7. Judge advocates are involved in several aspects of contracting. They review the preparation for deployment and handle any contracting issues that arise during deployment.

PREPARATION FOR DEPLOYMENT

G-8. Deploying judge advocates are identified at the earliest possible time to ensure they receive the contract 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. 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, and logistic and other support personnel.

G-9. Judge advocates review existing or proposed plans, paying particular attention to the acquisition and contracting appendixes; ensure contracting assets are among the first deployed; evaluate the availability of any Reserve Components contracting assets; and consider establishing an acquisition review board for major deployments. Failing to adequately plan for and deploy contracting assets at the initial stages increases the chances for mistakes and abuse with long lasting, negative effects.

G-10. Judge advocates review combatant command policies and procedures 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 Army Contracting Command, Expeditionary Contracting Command, Army Sustainment Command, Medical Logistics Management Center, and Defense Contract Management Agency.

G-11. Unit predeployment funding concerns include the following:

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

G-12. A deployable unit coordinates to have funds certified as available in bulk to support deployment purchases.

G-13. Commanders can use government purchase cards during expeditionary contracting. Units 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.

G-14. Units research the availability of specific appropriations and authorizations for the particular operation. Congress provides specific funds for purposes not otherwise within the DOD mission. Provision of these funds depends on the operation.

G-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 fund should include local currency if available before deployment.

CONTRACTING DURING DEPLOYMENT

G-16. Competition is the law. Absent statutory authority, full and open competition is required by the Competition in Contracting Act. 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. 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.

G-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 logistics civil augmentation program (LOGCAP) and other existing contracts.

G-18. LOGCAP is designed primarily for use where no treaties exist. Contracting officers can use these contracts inside as well as outside the continental United States. LOGCAP 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 LOGCAP contract as well. LOGCAP is an expensive contracting tool. Commanders need to use it judiciously with command oversight of requirements submitted to the LOGCAP contractor.

G-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.

G-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, Marine Corps, Navy, and Air Force retain substantial residual powers they can use to meet critical requirements that cannot be fulfilled using normal contracting procedures.

G-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

G-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 any warranted contracting authority.

G-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 on the government solely because someone who did not have authority to bind the government made the commitment. 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, principal assistant responsible for contracting, 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.

G-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.

G-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.

G-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 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.

Appendix H

Lessons Learned

This appendix provides the format the Judge Advocate General Corps (JAGC) uses to capture legal lessons learned.

OVERVIEW

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

SAMPLE FORMAT

H-2. The format is based upon the six core legal disciplines, the emerging areas that U.S. forces practice in multinational, interagency, and civil support operations, and the Joint Vision 2020 concept of doctrine, organization, training, materiel, leadership and education, personnel, and facilities.

H-3. The report is drafted 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 should recommend 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.

JAGC Lessons Learned Format

Issue: Define the issue that was confronted.

Decision: How was the issue resolved and what was the rationale?

Recommendation: What should be improved in this particular area to assist addressing this issue in the future?

I. International and Operational Law

- A. Chemical, biological, radiological, nuclear, and high-yield explosives
 - 1. Chemical weapons/riot control agents
 - 2. Biological weapons
 - 3. Nuclear weapons (components or nuclear materiel such as uranium or plutonium)
 - 4. Delivery systems for chemical, biological, radiological, nuclear, and high-yield explosives weapons
 - 5. High-yield explosives
- B. Artifacts and war trophies
 - 1. Artifacts
 - 2. War trophies
- C. Civil affairs
- D. Civilians on the battlefield/contractors
- E. Detention operations/prisoner of war issues
 - 1. Article 5 tribunals
 - 2. Article 78 reviews
 - 3. Code of conduct
 - 4. Detainees and detention operations
- F. Environmental
 - 1. Environmental damage from military operations
 - 2. Environmental issues of concern from civilian activities or sabotage
- G. International assistance/relations
 - 1. U.S. Government/host-nation interaction
 - 2. U.S. Government/multinational interaction
 - 3. U.S. Government/international organization interaction
 - 4. U.S. Government/nongovernmental organization interaction
- H. Humanitarian and civic assistance
- I. Human rights law
- J. Information operations
- K. Intelligence law
- L. Interrogations
- M. Law of war/law of armed conflict
 - 1. Training
 - 2. Violations
- N. Legal basis for conducting operations
 - 1. Security council resolutions
 - 2. United Nations reports
- O. Rule of law/judicial reform
- P. Stability operations
- Q. Rules of engagement and targeting

Figure H-1. Sample lessons learned

- R. Treaties and other international agreements and arrangements
 - 1. Asylum
 - 2. Status-of-forces agreements
- S. Weapons systems
 - 1. Legal review on weapons
 - 2. Lethal weapons
 - 3. Less than lethal weapons

II. Administrative and Civil Law

- A. Army Air Force Exchange Service
- B. Customs and passports
- C. Drawdowns
- D. Ethics/joint ethics regulation
- E. Freedom of Information Act and privacy acts
- F. Inspections
- G. Internet use
- H. Investigations
 - 1. 15-6
 - 2. Line of duty
 - 3. Mishap and safety investigation
 - 4. Financial liability investigations of property loss
- I. Labor and employment law
- J. Law of military installations
- K. Medical issues
- L. Military personnel law
 - 1. Administrative separations
 - 2. Conscientious objectors
 - 3. Evaluation reports
 - a. Enlisted
 - b. Officer
 - 4. Females in combat
 - 5. Hazing
 - 6. Homosexuality
 - 7. Lautenberg amendment
 - 8. Letters of reprimand
 - 9. Relief for cause
- M. Morale, welfare, and recreation

III. Contract and Fiscal Law

- A. Contract law
- B. Deployed contracting
- C. Fiscal law

Figure H-1. Sample lessons learned (continued)

IV. Claims

- A. Foreign claims
 - 1. Individual and corporate claims against the United States (DOS and DOJ should be notified)
 - 2. Claims of foreign governments
 - 3. Claims within the host nation that could affect U.S. interests or operations
- B. Personnel claims
- C. Solatia

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
- G. Servicemembers Civil Relief Act
- H. Uniformed Services Employment and Reemployment Rights Act
- I. Wills

VI. Military Justice

- A. General orders
- B. Judiciary
- C. Jurisdiction
- D. Magistrates
- E. Provisional units
- F. Searches
- G. Trial defense service
- H. Trial logistics
- I. Urinalysis program
- J. Victim witness liaison program

VII. Multinational Operations

VIII. Interagency Operations

- A. Interagency coordination
- B. Points of contact

Figure H-1. Sample lessons learned (continued)

IX. Homeland Security Operations

- A. Homeland defense
 - 1. Defense support to civil authorities
 - a. Military support to civilian law enforcement and Posse Comitatus Act
 - b. Special events
 - c. Civil disturbances
 - 2. Port security and customs
- B. Consequence management
 - 1. Disaster relief
 - 2. Weapons of mass destruction
- C. Counterdrug operations
- D. Counterterrorism
- E. Intelligence law and policy considerations
- F. Rules for the use of force
- G. Status and relationship of different agencies and subagencies participating in homeland security operations
- H. Funding

X. DOTMLPF and Country Materials

- A. Doctrine
- B. Organization (force structure)
- C. Training, the military decisionmaking process, and readiness
 - 1. Army
 - a. Annexes
 - b. Field standing operating procedures
 - c. The military decisionmaking process
 - d. Office mission-essential task list
 - 2. Combat training centers
 - a. Battle Command Training Program
 - b. Combined Maneuver Training Center
 - c. Joint Readiness Training Center
 - d. National Training Center
 - 3. Predeployment training materials
 - 4. Service academies
- D. Materiel
- E. Leadership
- F. Personnel
- G. Facilities
- H. Country materials

Figure H-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

AR	Army regulation
ARFOR	<i>See</i> ARFOR under terms.
ARNG	Army National Guard
ASCC	Army Service component command
BCT	brigade combat team
C2	command and control
CA	civil affairs
CJA	command judge advocate
CJCSI	Chairman, Joint Chiefs of Staff instruction
CJCSM	Chairman, Joint Chiefs of Staff memorandum
COA	course of action
DA	Department of the Army
DOD	Department of Defense
DODD	Department of Defense directive
DOS	Department of State
EPW	enemy prisoner of war
et seq.	et sequens meaning “and the following one”
FM	field manual
G-3	assistant chief of staff, operations
GC	Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War
GCC	geographic combatant commander
GCMCA	general court-martial convening authority
GPW	Geneva Convention (III) Relative to the Treatment of Prisoners of War
GWS	Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
GWS Sea	Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea
HMMWV	high-mobility multipurpose wheeled vehicle
HN	host-nation
I-D-D-T	interpret-draft-disseminate-train
J-2	intelligence directorate of a joint staff
J-3	operations directorate of a joint staff
J-5	plans directorate of a joint staff

JAGC	Judge Advocate General's Corps
JAGCNet	Judge Advocate General's Corps Information Network
JAGU	Judge Advocate General's University
JP	joint publication
JTF	joint task force
LAAWS	Legal Automation Armywide System
LOGCAP	logistics civil augmentation program
MDMP	military decisionmaking process
METT-TC	<i>See</i> METT-TC under terms.
NCO	noncommissioned officer
OPCON	operational control
OPLAN	operation plan
OPORD	operation order
OSJA	Office of the Staff Judge Advocate
ROE	rules of engagement
RUF	rules for the use of force
S-3	operations staff officer
SJA	Staff Judge Advocate
SOP	standing operating procedures
SROE	standing rules of engagement
SRUF	standing rules for the use of force
TJAG	The Judge Advocate General
TJAGLCS	The Judge Advocate General's Legal Center and School
TSC	theater sustainment command
U.S.	United States
UCMJ	Uniform Code of Military Justice
USAR	United States Army Reserve
USARCS	United States Army Claims Service
USATDS	United States Army Trial Defense Service
USG	United States Government

SECTION II – TERMS

ARFOR

The Army Service component headquarters for a joint task force or a joint and multinational force. (FM 3-0)

civil affairs activities

Activities performed or supported by civil affairs that (1) enhance the relationship between military forces and civil authorities in areas where military forces are present; and (2) involve application of civil affairs functional specialty skills, in areas normally the responsibility of civil government, to enhance conduct of civil-military operations. (JP 3-57)

civil support

(joint) Department of Defense support to U.S. civil authorities for domestic emergencies, and for designated law enforcement and other activities. (JP 3-28)

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)

command and control warfighting function

The related tasks and systems that support commanders in exercising authority and direction. (FM 3-0)

detainee

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

end state

(joint) The set of required conditions that defines achievement of the commander's objectives. (JP 3-0)

enemy combatant

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

enemy prisoner of war

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. (FM 1-02)

fires warfighting function

The related tasks and systems that provide collective and coordinated use of Army indirect fires, joint fires, and command and control (C2) warfare, including nonlethal fires, through the targeting process. (FM 3-0)

law of war

(joint) That part of international law that regulates the conduct of armed hostilities. (JP 1-02)

line of effort

A line that links multiple tasks and missions using the logic of purpose—cause and effect—to focus efforts toward establishing operational and strategic conditions. (FM 3-0)

line of operations

(Army) A line that defines the directional orientation of a force in time. (FM 3-0)

METT-TC

A memory aid used in two contexts: 1. In the context of information management, the major subject categories into which relevant information is grouped for military operations: mission, enemy, terrain and weather, troops and support available, time available, civil considerations. (FM 6-0) 2. In the context of tactics, major variables considered during mission analysis (mission variables). (FM 3-90)

mission command

The conduct of military operations through decentralized execution based on mission orders. Successful mission command demands that subordinate leaders at all echelons exercise disciplined initiative, acting aggressively and independently to accomplish the mission within the commander's intent. (FM 3-0)

operations process

The major command and control activities performed during operations: planning, preparing, executing, and continuously assessing the operation. The commander drives the operations process. (FM 3-0)

peace operations

(joint) A broad term that encompasses multiagency and multinational crisis response and limited contingency operations involving all instruments of national power with military missions to contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and facilitate the transition to legitimate governance. Peace operations include peacekeeping, peace enforcement, peacemaking, peace building, and conflict prevention efforts. (JP 3-07.3)

protection warfighting function

The related tasks and systems that preserve the force so the commander can apply maximum combat power. (FM 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 1-02)

stability operations

(joint) 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)

status-of-forces agreement

An agreement that defines the legal position of a visiting military force deployed in the territory of a friendly state. Agreements delineating the status of visiting military forces may be bilateral or multilateral. Provisions pertaining to the status of visiting forces may be set forth in a separate agreement, or they may form a part of a more comprehensive agreement. These provisions describe how the authorities of a visiting force may control members of that force and the amenability of the force or its members to the local law or to the authority of local officials. (JP 3-16)

sustainment warfighting function

The related tasks and systems that provide support and services to ensure freedom of action, extend operational reach, and prolong endurance. (FM 3-0)

warfighting function

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. (FM 3-0)

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