

Appendix B

LEGAL ISSUES

The legal issues that surround an HA operation are both significant and complicated. This appendix provides legal lessons learned from previous HA missions.

INTERNATIONAL AGREEMENTS

The JTF commander must be aware of any existing international agreements that may limit the flexibility of the HA mission. Existing agreements may not be shaped to support HA operations. Such was the case during Operation Provide Relief, when third-

country staging and forwarding of relief supplies was a major issue. Military HA commanders dealing with host nations and international organizations should anticipate the difficulties that international agreements can impose on HA.

LAW OF ARMED CONFLICT

Normally, the law of armed conflict does not apply to HA operations. However, it is used in conjunction with the Geneva and Hague Conventions, protocols, and custom laws that may provide the CJTF guidance concerning his operations. Guidelines for forces have to be developed from fundamental concepts of international humanitarian law. Mission imperatives and taskings must have a sound legal basis, and commanders must ensure that personnel under their control conform to internationally accepted standards of behavior and action.

The law of armed conflict applies only to combat actions. Specific legal responsibilities associated with armed conflict that also concern HA operations include—

- Care for civilians in an occupied territory.
- Issues concerning civilians and private property.

- Responsibilities concerning criminal acts.

While these specific legal tenets apply only if HA actions progress to open hostilities, JTF commanders may still use them as a basis for determining what is permissive and appropriate concerning civilians, private property, and handling of criminal acts. Air Force Pamphlet 110-311 provides details on the law of armed conflict.

Similarly, other legal issues that arise in an HA situation are not governed by other aspects of the law of armed conflict. Somalia was not an *occupied territory* under the terms of the Geneva Convention, for example. However commanders should attempt to address such issues using international laws, including the law of armed conflict, as a guide whenever possible. AFP 110-31 and FM 27-10 provide guidance to the JTF commander.

LAW OF THE SEA

Naval commanders must always render assistance to those in distress on the high seas. For HA operations, naval commanders may be tasked to provide assistance outside the bounds of existing guidelines. For example, in cases where no government or civil authority exists, naval units may be asked to establish a local

coastal guard or patrol or take on the responsibilities of harbormaster or harbor control. NWP 9/FMFM 1-10 provides guidance concerning maritime issues that may confront the CJTF.

¹ *International Law - The Conduct of Armed Conflict and Air Operations*. November 1976.

RULES OF ENGAGEMENT

The development of ROE for use by the forces assigned to an HA mission is essential to the success of the mission. ROE for HA operations are characterized by restraint. Levels of force, tactics, and, when approved, weaponry, will all be carefully contained. The sensitive political and international nature of HA operations means that the CINC must coordinate the details of HA ROE with the CJTF, which may change as the operation evolves. Under normal circumstances, JCS peacetime ROE apply to all military operations. The CINC, in coordination with the CJTF, must request supplemental measures to deal with specifics of the mission. Actual ROE established for each HA mission will depend on the individual situation and operational environment.

For coalition operations, all participating military forces should establish common HA ROE to provide consistency within the coalition. Individual nations using separate

national ROE will respond differently to the same situation. Certain precepts are essential to the concept of ROE for US military forces:

- The right of self-defense must never be prohibited.
- A unit commander will defend against a hostile act or hostile intent.

The two elements of self-defense are *necessity* and *proportionality*. In necessity, a hostile act must occur or there must be hostile intent. Proportionality—the use of force—must be reasonable in intensity, duration, and magnitude to ensure the safety of forces.

Figure B-1 is a sample ROE Card. These notional ROE are based on the ROE established for the US task force in Somalia. These sample ROE would be appropriate only after a decision is made to arm the forces conducting HA. ROE for an unarmed HA mission will differ.

**Sample Rules of Engagement Card for US Forces
Conducting Armed Foreign HA Missions**

Nothing in these rules of engagement limits your right to take appropriate action to defend yourself and your unit.

- You have the right to use force to defend yourself against attacks or threats of attack.
- Hostile fire may be returned effectively and promptly to stop hostile acts.
- When US forces are attacked by unarmed hostile elements, mobs, and/or rioters, US forces should use the minimum force necessary under the circumstances and proportional to the threat.
- You may **not** seize the property of others to accomplish your mission.
- Detention of civilians is authorized for security reasons or in self-defense.

Remember

- The United States is **not** at war.
- Treat all persons with dignity and respect.
- Respect local customs and traditions of the host nation.
- Use minimum force to carry out the mission.
- Always be prepared to act in self-defense

Figure B-1. Sample Rules of Engagement Card

PROPERTY

In some HA operations, military forces are authorized to use all necessary means to facilitate the flow of relief supplies. The lack of restraint under these guidelines may cause tension to escalate in the HA environment.

International and national military forces may require public or private property to perform assigned tasks. Use, or even seizure, of private property may be required for specific HA operations.

WEAPONS POLICY

In an HA situation, commanders may need a strategy to disarm the populace to enhance security and reduce crime. Authority to confiscate private property, such as individual privately owned weapons, will have to be addressed. Normally that authority resides with the mandate that established the HA task force.

The objective of the weapons policy may be to disarm segments of the civilian population. Potential methods to accomplish this goal are to—

- Confiscate weapons.
- Ask that weapons be turned in voluntarily.
- Trade weapons for cash or other commodities through weapons incentive programs.

Use of a *weapons policy card* similar to the unclassified version of the ROE card was particularly effective in Operation Restore Hope. UNITAF provided the card to relief agencies that had security forces or employed Somali nationals for security purposes. Its purpose was to highlight what was permitted and prohibited by the weapons policy enforced by UNITAF. Troops were trained on the identification of those persons entitled to carry weapons. In addition, identification cards were issued that permitted designated persons to carry weapons for self-defense. Commanders should decide what types of weapons to confiscate and how to disseminate the policy.

CIVILIAN DETAINEE PROCEDURES

Detention of civilians is normally an issue only in those cases where no local, state, or host nation government exists. However, HA commanders must plan to address the handling of civilian detainees. Key issues include—

- What authority permits detention?
- What conduct warrants detention?
- Who has legal jurisdiction to conduct criminal trials?
- Who will operate the detention facility?
- How will detainees be handled/processed?
- How long will criminals be detained?
- At what point can detainees be transferred to some recognized security police force?

ENVIRONMENTAL CONCERNS

US environmental laws are very strict and apply to all DOD personnel in the performance of their duties throughout the world. Title 40, Code of Federal Regulations (CFR), stipulates that military personnel are civilly and criminally liable for violations of EPA regulations. Past experiences with UNHCR and the Federal Yugoslav/Republican Serbian

governments provide an interesting dilemma where US military forces were directed to handle and dispose of hazardous (chemical) and biological wastes not in accord with EPA and OSHA regulations. However, these wastes were not unlawful under UN regulations and Yugoslav/Serbian law. US forces operating in HA must follow EPA and OSHA regulations.