



APPENDIX B: LEGAL CONSIDERATIONS IN AIR FORCE OPERATIONS

Last Updated: 28 Dec 2016

Legal Basis for Mission

Upon deployment, commanders and judge advocates (JAs) should be prepared to address the following questions concerning the legal basis for an operation:

- ★ What is the mission (e.g., peacekeeping, peace enforcement, humanitarian assistance/disaster relief, stability operations, armed conflict)?
- ★ Is this a UN, allied, coalition, or US only operation? How does this support effect operations (e.g., treaty obligations, political issues, and cultural sensitivities)?
- ★ Has the use of force been authorized?
- ★ What is the funding authority for this operation?
- ★ What is the chain of command? Are US forces participating in a multinational operation under the operational control of a US commander?

Status of Forces

Upon deployment, commanders and JAs should be prepared to address the following questions concerning the legal status of forces operating in a host nation:

- ★ What is the status of US forces in the host nation (e.g., status of force agreement (SOFA), UN expert on mission)?
- ★ How might this status affect the operation? Are there any restrictions on carrying weapons?
- ★ Who does the [commander, Air Force forces](#) (COMAFFOR) contact if host-nation authorities detain a US Service member?
- ★ What is the status of the different types of civilians accompanying the force in the host nation?

- ★ What is the US obligation concerning airport/landing fees, taxes, duties, entrance requirements?

Use of Force

When deploying, JAs address the following legal issues concerning the use of force:

- ★ What are the rules of engagement (ROE) and rules for the use of force (RUF)?
- ★ When and what do US forces engage?
- ★ What weapons or weapon systems can be used to destroy/neutralize any given target? Who is the release authority for each weapon or weapon system?
- ★ Who does a COMAFFOR contact to adjust the ROE or RUF, and how?
- ★ Have personnel received law of armed conflict (LOAC) training? Do they understand the concepts and elements of individual self-defense, unit self-defense, national self-defense, and collective self-defense?
- ★ Can US forces provide training to others who provide external protection or security services (e.g., foreign forces, local or host-nation police, contractors, nongovernmental organization employees)?
- ★ Can US forces perform “law enforcement” functions (e.g., stop civilian-on-civilian violence, detain civilians, search, or seize civilian property)?

Planning, Coordination, and Oversight

In operations planning, there are a number of basic legal issues to be addressed:

- ★ Who are our allies? Who are the combatants?
- ★ What is the “operational interpretation” of the ROE (e.g., hostile intent, hostile act)?
- ★ What is the status of a pilot, aircrew, or aircraft if it is shot down or forced to land?
- ★ Where can US aircraft fly without obtaining clearance (e.g., international airspace, overflight of excessive territorial claims)?
- ★ What actions does a COMAFFOR take if a foreign nation wants to inspect, search, or decontaminate US aircraft?
- ★ Are there any unique legal issues associated with the weapons or weapons systems present at any given deployment location?

Military Justice

Some issues to be addressed to ensure an effective military justice system include:

- ★ Who are the court-martial convening authorities? What are the command relationships?
- ★ What offenses does the US have primary jurisdiction over? Host nation?
- ★ How does a COMAFFOR handle “joint justice” issues? Who is the senior Air Force officer?
- ★ What control measures are or should be imposed (e.g., US Central Command General Order #1)?
- ★ What arrangements have been made for defense counsel services?
- ★ Will courts-martial be conducted at the operating location? If not, where?
- ★ How are Airmen made aware of commander directives (such as General Order #1 above)? Do members understand the contents of the commander’s directives?
- ★ What constitutes a “serious incident” at the operating location?
- ★ Are all commanders on G-series orders?
- ★ Who can discipline Guard and Reserve personnel? What coordination must occur when a deployed commander contemplates appropriate disposition of a Guard or Reserve member? Can they be extended at the operating location to complete disciplinary actions?

Claims

There are certain questions about claims that should be asked in any operation:

- ★ Who has claims jurisdiction under DODI 5515.08, *Assignment of Claims Responsibility*, 30 August 2016?
- ★ Has a foreign claims commission been appointed?
- ★ What do applicable international agreements say about claims liability and processing?
- ★ Where will a claims office be set up to receive and process claims from host-nation personnel?
- ★ Who will investigate claims? How will they travel?

- ★ Are there any unique tort provisions in the host-nation law? Is there a comparative law study?
- ★ How are claims processed under the SOFA or other international agreements?
- ★ Are solatium payments authorized (e.g., Korea or Japan)?

Fiscal and Contracting Issues

When deploying, the following legal issues concerning fiscal and contracting actions should be addressed:

- ★ Who is authorized to obligate the government (i.e., who has a contracting warrant)?
- ★ What funds are available to set up and sustain the operation? Who is keeping track of what is purchased and for how much?
- ★ What are the sources and methods available for acquisition of goods and services?
- ★ What do applicable international agreements say about building or repairing items in the host nation?
- ★ Do contracts include claims provisions? What is the US obligation under the provision?
- ★ What support can US forces provide foreign armed forces? Is there an acquisition and cross-servicing agreement between the US and other foreign forces?

Base Defense

When deploying, the following are legal issues concerning Airmen performing [base defense](#) duties:

- ★ Who is performing the base defense duties? Are these Air Force security forces personnel? Are these augmentees? What authority and responsibilities does the commander have for directing base defense?
- ★ What weapons do Airmen have at the deployed location and what are the legal issues regarding use of such weapons (e.g., mortars, hollow-point ammunition, incendiaries)?
- ★ Do Airmen understand the ROE? Do they understand the concepts and elements of “individual self-defense,” “unit self-defense,” “national self-defense,” and “collective self-defense?”
- ★ Has “mission essential property” been designated? If not, should it be designated?

- ★ What are the legal issues associated with the use of riot control agents, other non-lethal weapons, and landmines?
- ★ Do Airmen understand the procedures for searching and seizing property? What are the legal issues and procedures regarding searching and seizing host-nation property?
- ★ What should Airmen do if they witness civilian-on-civilian violence?
- ★ Is there a plan for handling enemy prisoners of war, civilian detainees, or those seeking temporary refuge? Has a detention facility been established? Is it properly marked? How and when does the Air Force transfer detainees to others (e.g., other US forces [typically Army] or the host nation)?
- ★ Do Airmen understand how to treat host-nation civilians? Can Airmen detain them? For what? How? How long? What do Airmen do with them once they get them? What if the host nation is unable or unwilling to prosecute or control them?
- ★ What are the legal issues associated with using Intelligence, Surveillance, and Reconnaissance (ISR) to support operations in the different operating environments: continental United States (CONUS); outside the CONUS hosted; and expeditionary?

Noncombatants and Noncombatant Property

When supporting combat operations, the following legal issues should be addressed concerning noncombatants:

- ★ Have medical personnel and chaplains been properly identified and do they exclusively perform noncombatant duties?
- ★ Are noncombatant facilities, equipment, and vehicles being used to support combatant activities?
- ★ Are noncombatant facilities, aircraft, vehicles, equipment, and supplies properly marked? If not, has an operational purpose been identified to preclude such marking?
- ★ Have medical facilities been located away from military objectives such as command and control facilities and supply staging areas? If not, has an operational purpose been identified to justify the current location?
- ★ Do medical personnel prioritize medical treatment based on military status, occupation, rank, or nationality or do they use triage (i.e., screening of patients to determine priority medical needs) to assist the wounded, sick, or injured in a methodical manner?

Contractors and Other Civilians Accompanying the Force

When deploying, consider the following legal issues concerning contractors and civilians accompanying the force:

- ★ What is their status?
- ★ Who is responsible for protecting them? Can they be armed for their own self-defense?
- ★ Do they participate in combatant activities?
- ★ Does a commander have to provide protective equipment (e.g., chemical warfare) and training? What can or cannot the commander provide (e.g., food, transportation, shelter, medical care)?
- ★ What, if any, disciplinary authority does a commander have over them? What happens if they are unable or unwilling to satisfy their obligations under the contract?

Redeployment Activities

When redeploying, address the following legal issues concerning property or facilities in the host nation:

- ★ What environmental laws will apply?
 - ★ What is the US liability concerning the property?
 - ★ What is the condition of the property?
 - ★ May the US make improvements to the property? Temporary or permanent?
 - ★ How will the US dispose of or transfer the temporary improvements or facilities?
 - ★ What controls are in place to ensure US property is properly disposed of (e.g., returned to the US, transferred to the Defense Reutilization and Marketing Office, abandoned)?
 - ★ Are host-nation claims of damage being properly analyzed in light of US law and applicable international agreements?
 - ★ What is the disposition of property purchased at the deployment location (e.g., televisions, fitness equipment)? Who has accounted for it?
 - ★ What will happen to “minor military construction” projects (e.g., tent platforms, guard shacks)?
-