

AIR FORCE DOCTRINE PUBLICATION 3-84



LEGAL SUPPORT



U.S. AIR FORCE

31 October 2024

Air Force Doctrine Publication 3-84, *Legal Support*

Table of Contents

Chapter 1: LEGAL SUPPORT FUNDAMENTALS	1
STAFF JUDGE ADVOCATE TO THE COMMANDER AIR FORCE FORCES	5
Chapter 2: JUDGE ADVOCATE SUPPORT TO AIR OPERATIONS	8
LEGAL REVIEW OF COMMAND AND CONTROL ISSUES	11
MISSION SPECIFIC JUDGE ADVOCATE SUPPORT.....	12
INTEGRATION OF LEGAL SUPPORT IN THE AIR OPERATIONS CENTER	16
OTHER OPERATIONAL LEGAL SUPPORT	18
Chapter 3: JUDGE ADVOCATE STAFF ROLE IN RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE DEVELOPMENT	19
RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE	19
RULES OF ENGAGEMENT CONSIDERATIONS.....	21
APPENDIX A: LEGAL SUBJECT MATTER EXPERTISE FOR AIR FORCE OPERATIONS	23
APPENDIX B: Other OPERATIONAL LEGAL SUPPORT	25
APPENDIX C: PLANNING AND EXECUTION DUTIES AND RESPONSIBILITIES	29
APPENDIX D: MISSION READINESS OF JUDGE ADVOCATE PERSONNEL.....	34
APPENDIX E: OVERVIEW OF US CODE SECTIONS AFFECTING THE DEPARTMENT OF DEFENSE	35
REFERENCES.....	37

FOREWORD

This document provides doctrine and practical guidance for commanders, judge advocates, and paralegals across the spectrum of conflict, with a focus on air operations. All military missions and operations require proper authority to act and comply with various laws, rules, and regulations.

A basic tenet of any military operation is the Armed Forces only conduct operations when affirmatively authorized or directed to do so by a competent authority. National security authorities originate in the Constitution and reside in Article 1, Section 8, Congress's enumerated powers, and Article II, Section 2, President's Commander-in-Chief powers. Congress, through the National Security Act of 1947 and the passage of Section 941 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), which established the requirement of the National Defense Strategy, provides oversight, while the President leads the Armed Forces and establishes the National Security Strategy. The President employs the Armed Forces of the United States to achieve national security strategic objectives. The United States Air Force (USAF) employs forces to pursue national security strategic objectives, creating effects through the conduct of operations, military engagement, security cooperation, deterrence, and other activities.¹

The biggest responsibility of any legal professional is to assist the commander in defining his or her command authorities in relation to forces and assets and his or her operational and administrative chains of command. USAF commanders rely on their judge advocates (JAs) for insight into the law and its impact on USAF operations; nevertheless, commanders have an inherent obligation to ensure compliance with domestic law and the law of war in the conduct of military operations and related activities in armed conflict, regardless of how such conflicts are characterized.² Proper legal counsel enhances commanders' decision-making ability and thus aids in mission success.

¹ For additional information on competition continuum, see Joint Doctrine Note (JDN) 1-22, *Joint Force in Strategic Competition*.

² See Air Force Instruction (AFI) 51-401, *The Law of War*, for additional information.

CHAPTER 1: LEGAL SUPPORT FUNDAMENTALS

The United States Air Force (USAF), like other Services, continues to operate in an increasingly complex environment around the world, demanding nothing less than the absolute best in legal capability. Sound, timely, and accurate legal guidance is vital for successful military decision-making and aids mission success. Whether during crisis or contingency, or in cooperation, competition, or armed conflict, commanders employ judge advocates (JAs) to gain insight into the law and its implications for USAF operations. The relationship between a JA and a commander is especially important given the commander's obligation to ensure compliance with domestic law and the law of war in the conduct of military operations and related activities in armed conflict, regardless of how such conflicts are characterized. Air Force Doctrine Publication (AFDP) 3-84, *Legal Support*, represents best practices and fundamental principles focused on legal advice and considerations across the range of USAF operations.

This document informs USAF commanders about the legal support available to them. When this support relates primarily to their duties as commander of the Air Force Service component to the joint force, this document will address the commander, Air Force forces (COMAFFOR). However, when the doctrine pertains to matters primarily concerning joint operational or functional component commander duties, like the integration of legal support in the air operations center (AOC), this document will address the joint force air component commander (JFACC), even though the JFACC and the COMAFFOR usually are the same person. Because the COMAFFOR usually is dual-hatted as the JFACC or combined force air component commander (CFACC), the requirements and responsibilities of the COMAFFOR and JFACC or CFACC are usually inextricably linked.

COMMAND AUTHORITY

The COMAFFOR is responsible for ensuring USAF personnel understand and comply with legal requirements. The COMAFFOR's staff judge advocate (SJA) is responsible for providing timely and effective legal advice. Effective discharge of their responsibility requires commanders to understand their legal authorities, responsibilities, and force-multiplying capability of an SJA. As explained above, a commander's legal authority is derived from the Constitution and statutes enacted by Congress. However, the legal instruments that provide a commander's authority are only part of the equation.

The authority and responsibilities of command are distinctive elements of military operations. How commanders exercise their authority can determine the success or failure of the mission according to the following principles:

Command is central to all military action.

- ★ Command is the responsibility of an individual, not a staff. Command is exercised by virtue of the office held and the special assignment of officers holding certain military grades who are eligible to exercise command.³
- ★ A commander can exercise command authority through subordinate commanders.
- ★ Deputy commanders are staff officers and have no command functions. However, they assist the commander through advising, planning, researching, and investigating. These officers must issue all directives in the commander's name.
- ★ Some command authorities may be delegated; however, the responsibilities of command may never be delegated.⁴

The concept of command embodies two essential functions. First, it is the legal authority over people, including the power to discipline. Second, command is the legal responsibility for assigned resources and mission accomplishment.

COMMANDER'S ROLE

"The Air Force organizes, trains, and equips forces to be an air component to a joint force commander (JFC). As part of the joint force's air component, our forces must be prepared to accomplish JFC objectives. The air component commander's administrative authorities are derived from Title 10, US Code, and exercised as the commander, Air Force forces (COMAFFOR). The air component commander's operational authorities are delegated from the JFC and exercised as both the COMAFFOR, over Air Force forces, and as the functional joint force air component commander (JFACC), over joint air forces made available for tasking. Thus, the air component commander leads Air Force forces as the COMAFFOR and the JFC's joint air operations as the JFACC. This duality of authorities is expressed in the axiom: Airmen work for Airmen and the senior Airman works for the JFC."

-- Air Force Doctrine Publication (AFDP) 1, *The Air Force*

Since the COMAFFOR and JFACC are nearly always the same individual, this AFDP will use the term "air component commander" when referring to duties or functions that could be carried out by either or both, unless explicit use of the term "COMAFFOR" or "JFACC" is necessary for clarity.

³ See Department of the Air Force Instruction (DAFI) 51-509, *Appointment to and Assumption of Command*, for additional information.

⁴ See DAFI 51-509, *Appointment to and Assumption of Command*, for additional information.

The commander's role is unlike any position in the civilian world and almost any other found in government. A COMAFFOR has the legal authority to perform various roles and responsibilities and the corresponding legal obligation to meet requirements defined by their roles and responsibilities. Accordingly, commanders are responsible for the following:

- ★ Execute the mission.
- ★ Lead people.
- ★ Manage resources.
- ★ Improve the unit.⁵

COMPLIANCE WITH THE LAW

It is essential for legal support professionals to assist the commander in understanding how local, federal, international, and host-nation (HN) laws apply to the USAF and its personnel.⁶ In many cases, the USAF, as a federal entity is not directly bound by state or local laws. HN laws may not apply or might be superseded by basing agreements or status of forces agreements (SOFAs). However, this does not relinquish commanders from understanding the laws through their legal support resources. Some aspects of law are well known to the commander, such as the law of war, but other areas may not be.⁷ Unless otherwise specifically authorized by a Department of the Air Force (DAF) issuance, only JAs and attorneys under the qualifying authority of The Judge Advocate General of the Air Force and attorneys under the qualifying authority of the General Counsel of the Air Force (SAF/GC) may practice law. All USAF JAs are trained in the basic foundations and principles of law, including international law. Legal support through advisement and a commander's compliance with the law only enhances effective command and control (C2) of a force for the commander.

JUDGE ADVOCATE ORGANIZATION

The Judge Advocate General (TJAG), in accordance with 10 United States Code (USC) 9037, is the legal advisor with authority to provide independent legal advice to the Secretary of the Air Force (SecAF), the Chief of Staff of the Air Force (CSAF), the Chief of Space Operations (CSO), and all officers and agencies of the DAF. In accordance with 10 USC 9037 and 10 USC 806, TJAG directs Air Force Judge Advocate General's (AFJAG) Corps attorneys and paralegals in the performance of their duties and has specified authority to assign, deploy, and detail all AFJAG Corps attorneys and paralegals. Additionally, Air Force issuances from TJAG require all the AFJAG Corps attorneys to maintain an active license to practice law in at least one jurisdiction and

⁵ See AFI 1-2, *Commander's Responsibilities*, for additional information.

⁶ See AFI 51-402, *International Law*, for additional information.

⁷ See Joint Publication (JP) 3-84, *Legal Support and DoD Law of War Manual*, for additional information.

require all AFJAG Corps personnel to comply with military and civilian codes of professional responsibility and ethics that govern licensure and the practice of law.⁸

Federal law also provides that no officer or employee of the Department of Defense (DoD) may interfere with:

- ★ The ability of JAs assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.⁹

The Department of the AFJAG Corps organization includes the following personnel:

- ★ TJAG.
- ★ Deputy Judge Advocate General (DJAG), Commander of the JA Field Operating Agency.
- ★ All other USAF officers designated as JAs.
- ★ Paralegals and those assigned duties in legal offices at any level of command.
- ★ Civilian attorneys and legal services civilians supporting the AFJAG Corps mission.
- ★ Air Force Reserve Component (ARC) officers designated as JAs.
- ★ USAF Reserve Component enlisted personnel in the paralegal services career field and those assigned duties in legal offices at any level of command.

LEGAL AREAS

Department of the Air Force Judge Advocate (DAF/JA) provides the USAF and United States Space Force (USSF) support in three areas: **operations and international law, civil law and litigation, and military justice and discipline**. Effective lines of communication and support to field SJAs and commanders ensure full-spectrum legal support in all legal functions. The legal areas are TJAG's primary vehicle to coordinate with and act through a commander's SJA, to provide legal reachback support to field commanders in the form of legal capabilities and added expertise concerning a particular legal issue. As the commander's single focal point for all legal services, the SJA is responsible for identifying when a particular legal issue merits the additional legal expertise an area provides. For example, if warranted, an SJA may seek area expertise in aircraft investigations, claims, government contracts, and environmental or labor issues.

⁸ See AFI 51-110, *Professional Responsibility Program*, and DAFI 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations, Accessions, and Professional Development*, for additional information.

⁹ See 10 USC 9037, *Judge Advocate General, Deputy Judge Advocate General: appointment: duties*, for additional information.

STAFF JUDGE ADVOCATE TO THE COMMANDER AIR FORCE FORCES

The COMAFFOR's SJA has several staff functions that fulfill specific responsibilities. These functions are usually related to providing advice or services to the commander or assisting the commander and the component staff with technical, administrative, or tactical matters. In addition, the COMAFFOR's SJA provides the full spectrum of legal services and advice to the COMAFFOR and Air Force forces (AFFOR) staff.

STAFF JUDGE ADVOCATE

The SJA duty title will only be used for military officers who are designated by TJAG as a judge advocate and assigned by TJAG to serve as the principal legal advisor to a commander. The SJA is the senior JA assigned to provide legal advice to a court-martial convening authority (the Air Force or Space Force commander with authority to convene general or special courts-martial). The convening authority is typically exercised by the installation or host unit commander. SJAs also provide legal advice and services to commanders of tenant units served by the host unit. The principal responsibility of the SJA is to provide full-spectrum legal services required by commanders and their staff. (DAF 51-101).

By law, commanders responsible for convening courts-martial must communicate with the SJA, or their designee, in matters relating to the administration of military justice. (10 USC 806). By law, SJAs are authorized to communicate directly with the SJA of a superior or subordinate command or with TJAG. (10 USC 806). No officer or employee of the DoD may interfere with the ability of JAs to give independent legal advice. (10 USC 9037).

JAs and paralegals focus on legal issues affecting the COMAFFOR's ability to provide mission-ready air, space, and cyberspace capabilities, such as those relating to the planning, deployment, reception, staging, onward movement, integration, sustainment, and redeployment of forces. With assistance from JAs and paralegals, the COMAFFOR establishes and maintains good order and discipline for all members assigned or attached.¹⁰ The AFFOR SJA provides guidance and managerial oversight to all subordinate JAs and paralegals.

Except for component major commands and component numbered Air Forces, AFFOR AFJAG Corps personnel should not be dual-hatted as legal advisors to the JFACC and AOC.

¹⁰ See AFDP 3-0, *Operations*, for additional information.

The SJA's duties to the COMAFFOR include the responsibilities to:

- ★ Advise and assess the impact of US laws, HN laws, international law, and international agreements on the actions and planning of US and coalition forces (e.g., overflight issues, bed down, HN support, commercial support to operations acquired through Acquisition and Cross-Serving Agreements or Mutual Logistics Support Agreements and Operational Contract Support, environmental laws, foreign criminal jurisdiction, and legal status of multinational and US personnel).
- ★ Assess the impact of international law (especially the law of war) and customary practices on operations and personnel (e.g., the status of civilians, contractors, detainees, and asylum seekers).
- ★ Provide assessment and guidance on command relationships and authorities.
- ★ Advise and assess the impact of fiscal and contracting authorities on operations related to resources, requirements, and equipment.
- ★ Advise and assess legal consequences of employing informational capabilities, operations, and activities in the information environment.¹¹
- ★ Advise the commander on how to maintain good order and discipline effectively.
- ★ Advise the COMAFFOR, AFFOR staff, and subordinate legal offices on issues involving claims under either US law and directives or applicable international agreements and customary practice (e.g., compensation, claims for property damage, personal injury, or death).
- ★ Advise the COMAFFOR and subordinate legal offices on the type, nature, and procedural requirements of investigations (e.g., criminal investigations, accident investigations, and friendly fire investigations).
- ★ Advise the COMAFFOR, AFFOR staff, and subordinate legal offices on general legal issues related to combat support (e.g., ethics, foreign gifts, legal assistance, and support to the Army and Air Force Exchange Service).
- ★ Advise the COMAFFOR, AFFOR staff, and subordinate legal offices on issues regarding civil-military operations.
- ★ Assess law and policy governing domestic use of force and homeland security.
- ★ Assess and advise the COMAFFOR on the availability and applicability of legal authorities and funding to support security cooperation activities with partner nations.

¹¹ See AFDP 3-13, *Information in Air Force Operations*, for additional information.

ORGANIZATION AND MANPOWER

The organization of the COMAFFOR's legal staff varies based on the scope of the operation and the number of subordinate forces. TJAG will assign legal support derivative of command requirements and the COMAFFOR's SJA determines how best to organize subordinate JAs and paralegals within the organization. A common practice is to organize by subject matter areas (i.e., military justice, international law, fiscal law, civil law, and claims). COMAFFOR AFJAG Corps personnel manning should be tailored appropriately to the operation while minimizing the forward footprint. Reachback and distributed staff capabilities should be considered when determining manning requirements.

CHAPTER 2: JUDGE ADVOCATE SUPPORT TO AIR OPERATIONS

Virtually all aspects of deployment and air operations have legal considerations, from readying the force to redeployment activities. JAs assist planners in the application of legal considerations and in recommending a legally acceptable course of action (COA) to the commander. Leaders should seek legal advice during each phase of the joint planning and operations process to ensure legal considerations are addressed.

While not an exhaustive discussion, JAs and paralegals may take any of the following actions in their support of air operations and deployment.

READYING THE FORCE

JAs need to advise commanders of forces preparing for deployment from the beginning. The development and implementation of robust preventive law programs is paramount to readying the force. Participating in the logistics support process to obtain, pre-position, or transfer resources to sustain operations is also important. JAs should provide training and mission-related legal assistance on the legal issues influencing readiness (e.g., estate planning, law of war, and rules of engagement [ROE]). Finally, legal support capabilities must correspondingly be prepared for deployment.

LEGAL BASIS FOR OPERATION

Ascertaining basic facts and authorities for commanders is central to JAs advisement role. JAs need to determine the answers for several questions.

- ★ What is the mission (e.g., peacekeeping, peace enforcement, humanitarian assistance, disaster relief, stability operations, or armed conflict)?
- ★ What is the domestic legal basis for the mission? Is there congressional authorization? If so, does the authorization include the authority to use force (i.e., authorization for the use of military force)? Is there a basis under the President's Article II authorities if there is no congressional authorization?
- ★ What is the international legal basis for the mission (e.g., United Nations [UN] Security Council Resolution under the UN Charter, Chapter VII, self-defense, or other treaty obligations)?
- ★ Is this a UN, allied, coalition, or US-only operation? How does this support affect operations (e.g., treaty obligations, political issues, and cultural sensitivities)?
- ★ 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 (OPCON) of a US commander?

PREPARING THE OPERATIONAL ENVIRONMENT

JAs must be proactive in identifying and resolving legal issues within the operational environment (e.g., HN support, use of force, and environmental constraints). The removal, documentation, or resolution of legal impediments encountered during base support planning activities is vital to mission success. During this planning time, the identification of legal support requirements and capabilities needed to support operations (e.g., legal services, equipment, and facilities) must also be considered. Lastly, the time to determine legal reachback capabilities and requirements available to support forward-deployed forces and those required to sustain operations is when the operational environment is being prepared.

STATUS OF FORCES

The status of US forces determines what protections are afforded to the forces. JAs need to understand the status of US forces in the host nation (HN) (e.g., SOFA, HN expert on a mission). It should also be considered how this status might affect the operation. For example, are there any restrictions on carrying weapons in the HN? If a US service member is detained by HN authorities the contact information for whom the COMAFFOR or JFACC (when the COMAFFOR is appointed) calls must be known by JAs. The different types of civilians accompanying the force in the HN and their status must also be determined. The US forces working with the HN in ports of entry as well may need support and guidance from JAs because status of forces agreements may or may not cover US obligations concerning airport and landing fees, taxes, duties, and entrance requirements.

POSITIONING THE FORCE

JAs should deploy as part of advance and reception teams or operational cadre to receive and assist in the beddown of deploying forces. Participation in negotiations for HN support and the status of US forces in an HN (e.g., foreign criminal jurisdiction, landing fees, use of facilities, claims provisions, physical access and exclusion issues, and taxes) is **only allowed if** proper coordination with the State Department and Office of the Secretary of Defense has been completed and authority has been delegated.¹² The development of comparative law studies of the operational environment (e.g., civil, and criminal procedures, a summary of unique HN laws, and rights of US personnel apprehended by HN authorities) are useful aids that allow for proactive legal advice. Additionally, JAs support logistics processes to obtain goods and services from the local economy (e.g., operational contract support actions, environmental law, and land use issues). Assisting commanders and their staff in developing local policies and procedures to protect the force and maintain discipline (e.g., General Order #1, force protection plan) supports in mission focus. The education of deploying forces on legal issues and policies that apply to the location and operations conducted from the location (e.g., HN law, ROE, and claims provisions) also enables the force to focus on the mission.

¹² For additional information on authorities, see DAFI 51-403, *International Agreements*, and DoDI 5530.03, *International Agreements*.

OPERATIONS PLANNING

When JAs are in the planning process there are several questions they should ensure are covered.

- ★ Who are our allies?
- ★ Who are the combatants?
- ★ What are the restraints and/or constraints affecting ROE?
- ★ 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?

Unique to JAs and their legal functions are legal issues associated with the weapons or weapons systems present at any given deployment location. JAs similarly ensure plans comply with relevant multilateral and bilateral international agreements, international and domestic law, US government policy, and DoD guidance. As JAs review the entire plan they should focus on areas of legal significance (e.g., legal authorities, command relationships, targeting, fiscal considerations, operations in the information environment, HN support agreements, air navigation, use of force, and status of forces). Additionally, legal appendices and annexes must be generated and reviewed to confirm they are complete and provide the necessary guidance during the operations planning process. Finally, it is important to ensure the appropriate number and type of JAs and paralegals have been identified to deploy in support of operations or support operations in place.

EMPLOYING THE FORCE

JAs support in employing the force follows two lines of efforts; the overall force and legal specific forces. The overall force requires the accomplishment of mission training for the supported population (e.g., ROE, law of war, and General Order #1). Additionally, JAs must support actions to generate operational elements of the force (e.g., logistics support, operations planning, and target reviews). More specifically for legal forces, JAs need to employ legal reachback capabilities to enhance legal services (e.g., connectivity to legal information services, and liaison with legal specialists). JAs must also develop and organize legal services to support continuing operations (e.g., legal assistance, claims services, military justice support, and legal support to C2).

SUSTAINING THE FORCE

To sustain the force JAs provide full-spectrum legal services to AFFORs at forward operating locations (e.g., courts-martial, legal assistance, claims, and C2 support). JAs refine legal support requirements and adjust legal services to meet mission requirements.

(e.g., ROE changes, tax program, and upgraded equipment). JAs correspondingly provide continuous support for the logistics processes (e.g., military construction, long-term service contracts, and new contracts). Support to C2 activities and ongoing operations (e.g., ROE training, target reviews, and mission and force generation) will also be necessary.

RECOVERING THE FORCE

When recovering the force, JAs need to address legal issues concerning real property, materials, and real estate that are returned to the owner or HN (e.g., environmental impact, the value of improvements to facilities). It is correspondingly necessary to ensure defense goods and services are sold, transferred, disposed of, or returned in accordance with law and policy (e.g., fitness equipment, temporary facilities, tent platforms, and supplies). Recovering AFFORs will also require personal legal services and the adjudication and settlement of claims for and against US forces (e.g., personal injury, property damage) must be accomplished. Not all forces may return to their home station and those remaining forces who stay behind to support recovery operations will also require legal assistance (e.g., legal assistance, contracting support, and logistics).

REDEPLOYMENT ACTIVITIES

A number of redeployment activities focuses on the ownership real property and property. JAs will need to determine what real estate and environmental laws apply the property. US liability and the condition of the property may be controlled by an agreement and may be affected by whether the property is classified as temporary or permanent and whether or not the US made any improvements to the property. JAs need to pay close attention to whether HN claims of damage are analyzed correctly considering US law and applicable international agreements. Where there any “minor military construction” projects (e.g., tent platforms, guard shacks) constructed during operations? If so what happens to the construction? JAs should assist in how the US will dispose of or transfer the temporary improvements or facilities. When discussing non-real property, JAs need to consider what controls are in place to ensure US property is correctly disposed of (e.g., returned to the US, transferred to the Defense Reutilization and Marketing Office, or abandoned). Lastly, JAs need to determine if property was purchased at the deployment location (e.g., televisions, fitness equipment) and who and how it was accounted for it. The purchased property will also have to properly disposed of after operation are completed.

LEGAL REVIEW OF COMMAND AND CONTROL ISSUES

C2—the exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission—is based on legal requirements and authorities. Importantly, in an operational environment, a commander’s specific authorities and responsibilities over various forces may differ according to their specified command relationship (OPCON, tactical control [TACON], or support).¹³ Legal

¹³ For additional information on command relationships, see JP 1 Vol 2, *The Joint Force*.

professionals assist the commander in defining his or her command authorities in relation to forces and assets and his or her operational and administrative chains of command. As these responsibilities and authorities differ, the need to understand associated legal requirements becomes increasingly important.

The USC through specific statutes expressly creates some command authorities. Agencies with unique command arrangements involving “dual-purpose” forces are an example. “Dual-purpose” forces are funded and controlled by organizations that derive authority under laws contained in Title 10, *Armed Forces*, and Title 50, *War and National Defense*, USC. The most significant benefit of “dual-purpose” forces is their authority to operate under Title 50 laws while at the same time being employed by combatant commanders (CCDRs) under their Title 10 authority. In addition, legal consultation facilitates operations within dual statutory constructs. See Appendix D for a summary of the major sections of the USC affecting the DoD.

AIR RESERVE COMPONENT CONSIDERATIONS

Air Reserve Component forces include both the Air National Guard (ANG) and the Air Force Reserve (AFR) forces.

The command team should understand the status when working with a state’s ANG in Title 32, *National Guard*, status, versus the Air National Guard of the United States when federalized under Title 10. Seeking legal advice related to OPCON and administrative control (ADCON) of ANG forces is important to effectively work with, alongside, or in command of ANG forces under Title 32 or Title 10 authorities and specific to ANG forces’ operating locations within and outside the US.

Similar considerations apply when dealing with the AFR forces. AFR forces train and operate in a federal status under Title 10. As a part-time force, the AFR forces are like ANG forces in that they are not continually in active-duty status. AFR forces are subject to the *Uniform Code of Military Justice (UCMJ)* when on active duty and inactive duty training.

MISSION SPECIFIC JUDGE ADVOCATE SUPPORT

JAs support all USAF operations supporting the COMAFFOR and the COMAFFOR’s role as the JFACC. The support at its core encompasses the following areas but JAs must stand ready for transformations in future capabilities and mission sets.

AIR COMBAT OPERATIONS

Virtually all aspects of warfare have legal considerations. Attacks may be restricted by political considerations, as well as by international law, including the law of war, and ROE. Counterair, strategic attack, counterland, countersea, and personnel recovery operations are all affected by international and HN law, particularly laws governing the sovereignty of a country’s land, maritime, and air boundaries. Counter-weapons of mass destruction operations raise serious implications regarding the lawful use of weapons under the law of war and US obligations under international arms control treaties. AFJAG Corps

personnel have a vital role in training personnel and advising commanders on the legal aspects of targeting. The SJA for the COMAFFOR provides dedicated legal staff to accomplish the training and advising roles.¹⁴

OPERATIONS IN AN IRREGULAR WARFARE ENVIRONMENT

Irregular Warfare (IW) is characterized as a violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s).¹⁵ The COMAFFOR's SJA plays a critical role in planning and executing indirect-support IW activities by ensuring that proper legal authorities and funding are available and identified for all security cooperation assistance materiel and non-materiel support provided to partner nations by US forces. If operations progress from indirect and direct support (not including combat) to direct support (including combat), commanders should anticipate ROE adjustments. In addition, operations conducted near civilians may present law of war and ROE challenges. Therefore, commanders should be aware of the potential for rapidly changing ROE, the need to request modifications to the ROE for mission accomplishment, and the need to inform subordinates as changes occur. Understanding the commander's intent and ROE can reduce the chances of tactical errors resulting in strategic setbacks.

CYBERSPACE OPERATIONS

There are domestic and international legal considerations in all aspects of cyberspace operations, including who has the authority to conduct what type of operation in cyberspace. It is essential to ascertain whether a proposed activity or operation falls within the assigned mission of a USAF organization. Some cyberspace operations fall within the purview of the national intelligence community or another federal agency.

Further, a particular proposed activity or operation may implicate domestic legal issues such as Fourth Amendment rights, statutes designed to protect privacy, or those statutes prohibiting misuse of or interference with satellites or other communications systems. Proposed cyberspace operations should also be reviewed for compliance with applicable international law, including the law of war.¹⁶

AIR MOBILITY OPERATIONS

Since air mobility operations cover the globe, many legal issues arise during normal operations. Support from HNs involved in any air mobility operation is essential. HN support is needed to ensure the availability of fuel for air mobility aircraft. Additionally, it is paramount to obtain diplomatic clearances from an HN for overflight and landing. Past conflicts have demonstrated the ability, or lack thereof, to obtain diplomatic clearances

¹⁴ See AFDP 3-01, *Counterair Operations*, AFDP 3-03, *Counterland Operations*, AFDP 3-04, *Countersea Operations*, AFDP 3-14, *Air Force Space Support*, AFDP 3-40, *Counter-Weapons of Mass Destruction Operations*, AFDP 3-50, *Personnel Recovery*, and AFDP 3-70, *Strategic Attack*, for additional information.

¹⁵ See JP 1, Vol 1, *Joint Warfighting* (Common Access Card required), for additional information.

¹⁶ For additional information on authorities and legal/law enforcement considerations and constraints, see AFDP 3-12, *Cyberspace Operations*, JP 3-12, *Cyberspace Operations*, and DoD Law of War Manual.

has far-reaching impacts on air mobility efforts. SOFAs or other agreements need to be understood and adhered to by personnel and usually include the status of personnel, operating rights and responsibilities, possible exemption from landing fees, duties, taxes, boarding and inspection of military aircraft, and personnel entry requirements. Waiver of inspection and boarding of aircraft is critical to maintaining the sovereignty of US military aircraft. Failure to adequately recognize and observe agreements with an HN can result in mission failure.

SPACE OPERATIONS

The AFJAG Corps maintains a cadre of JAs specially trained in space law who understand the treaty, policy, and legal considerations associated with space and counterspace operations.¹⁷

SPECIAL OPERATIONS

Special operations forces, along with cyber operations forces, are unique in the way distinct statutes in the USC have established unified combatant commands. Specifically, with special operations forces, the law details assignment of forces, authorities, and activities unique to special operations.¹⁸ As a result, personnel will encounter distinct legal issues, involving the law of war, use of force, fiscal law, environmental law, international agreements, and other legal considerations. The key to avoiding legal obstacles to mission accomplishment is early identification and resolution of potential legal issues before they affect mission success rates. Therefore, Air Force special operations force commanders should ensure qualified legal support is integrated into mission planning, ROE development and publication, aircrew and operator training, and actual mission execution.¹⁹

NUCLEAR OPERATIONS

Nuclear Operations are a no-fail mission set for the USAF and represent some of the most heavily legislated and scrutinized aspects of the DoD. International law, including the law of war and nuclear arms control treaties, place restrictions on the quantity of nuclear weapons that may be deployed at one time. Nuclear Command, Control, and Communications (NC3) employ unique Command Relationships (COMREL) to exercise Presidential authority over nuclear forces. Day-to-day operations to deploy, maintain, and secure nuclear weapons are impacted by international law, treaties, RUF, property law, environmental law, posse comitatus, HN agreements, and other legal considerations. Responding to nuclear weapons accidents and incidents requires interagency and/or international cooperation and an understanding of domestic or HN emergency response

¹⁷ See JP 3-14, *Joint Space Operations*, for additional information.

¹⁸ See 10 USC 167, *Unified Combatant Command For Special Operations Forces*, for additional information.

¹⁹ See AFDP 3-05, *Special Operations*, for additional information.

operations. Commanders rely on JAs for advice and counsel across the full spectrum of nuclear deterrence and assurance operations.²⁰

DEFENSE SUPPORT TO CIVIL AUTHORITIES

There are Constitutional, statutory, and regulatory considerations to legal support regarding homeland operations and the law, including financial reimbursement to the DoD. Because of legal and policy complexities, prompt and frequent consultations with military legal experts are among the most important considerations in planning for and employing military assets in the homeland environment.²¹

OPERATIONS IN THE INFORMATION ENVIRONMENT

As in all military operations, the law of war applies to operations in the information environment (OIE). Actions against military systems without consideration of collateral effects may result in legally or politically unacceptable effects on the civilian population. Similarly, ROE in each area of responsibility (AOR) may further constrain the integrated employment of information capabilities. Commanders, in coordination with SJAs, should request mission-specific ROE from the appropriate senior authority (i.e., CCDRs, Secretary of Defense [SecDef], etc.) as required. Since the operational complexity of applying information capabilities may include multiple approval authorities and complex laws, principles, and policies, JAs should be included in OIE planning.²²

INTELLIGENCE, SURVEILLANCE, AND RECONNAISSANCE

There are numerous legal issues associated with Intelligence, Surveillance, and Reconnaissance (ISR), especially if intelligence collection includes information related to US persons. Coordinate ISR activities with JAs to ensure compliance with the law and any existing ROE. Manned and unmanned aircraft may be subject to HN overflight and access restrictions in an area of responsibility. DoD practice and procedures for obtaining foreign clearance for US military aircraft are outlined in the DoD Foreign Clearance Guide (the appropriate login is required to access this product).²³

RESCUE OPERATIONS

JAs provide legal advice to commanders on all aspects of air and ground rescue operations. Rescue operations consist of several specific tasks USAF units perform to recover isolated personnel. These operations may be performed during peacetime and wartime, utilizing the entire spectrum of peaceful and non-peaceful means, with a high probability they will be conducted in a joint environment. Due to the quick actions needed to perform rescue operations successfully, JAs familiar with these operations are readily

²⁰ See AFDP 3-72, *Nuclear Operations*, for additional information.

²¹ See AFDP 3-27, *Homeland Operations*, for additional information.

²² For additional information on policy, see AFDP 3-13, *Information in Air Force Operations*.

²³ See AFDP 2-0, *Intelligence*, for additional information.

available to advise commanders and be involved throughout the process-from the beginning of rescue planning activities to the reintegration of recovered personnel.²⁴

COMBAT SUPPORT

JAs provide legal advice to commanders and AFFOR staff on all areas of combat support, including budget, personnel, military justice, claims, SOFA, international agreements, contracting actions, and specialized support in multinational, civil-military, and combat operations. The JA provides services that maximize the legal readiness of the force on both organizational and personal levels.²⁵

DISTRIBUTED OPERATIONS

Due to technological advances, today's Airmen can conduct long-range strikes, operate remotely piloted vehicles, or conduct cyberspace operations or other support through reachback from locations outside an operational area. Such operations may raise complex legal and or command relationship issues, especially concerning the role of USAF civilians and contractors. While the installation legal office provides legal support to a unit engaged in distributed operations, all operationally relevant legal guidance should still come from the COMAFFOR's legal office or the associated AOC.

INTEGRATION OF LEGAL SUPPORT IN THE AIR OPERATIONS CENTER

JAs and paralegals are usually integrated into the various divisions and cells within an AOC. Legal support to an AOC is categorized as a specialty team designed to assist the AOC commander and all AOC divisions. In addition, legal support is provided to assist special functions within a core team, such as targeting and ROE cells.

The COMAFFOR should ensure their JAs and paralegals are made part of the joint legal staff. They should also ensure the level of legal support meets the COMAFFOR's requirements when performing duties as the JFACC and meets the AOC commander's requirements. The nature and scope of air operations, the operations tempo within the AOC, and the requirements of the supported commander typically determine JA and paralegal resources given to the AOC.

STRATEGY DIVISION

JAs and paralegals assist the strategy division by evaluating legal issues involved with formulating strategy to achieve air component and joint force commander (JFC) objectives. In addition, they concentrate on long-range planning to support the development, refinement, dissemination, and assessment of the JFACC's plans and operations in support of the JFC's strategy and the joint air operations plan (JAOP). In

²⁴ See AFDP 3-50, *Personnel Recovery*, for additional information.

²⁵ See AFDP 4-0, *Combat Service Support*, for additional information.

addition, JAs and paralegals give tailored legal services to support the planning requirements of the strategy division.

The primary role of the JA is to ensure the proposed strategy, including branches and sequels, is consistent with the law, policy, and orders from commanders. They also address any legal constraints that may affect joint or coalition forces.

COMBAT PLANS DIVISION

JAs and paralegals provide commanders assistance in developing lawful plans and orders that support the JAOP and the guidance issued by the JFC. Additionally, within the combat plans division, JAs facilitate the conversion of strategic guidance into executable plans and orders.

JAs and paralegals participate in an iterative planning process to assist commanders in identifying, prioritizing, and selecting specific tasks to be accomplished and targets to be serviced. In this capacity, JAs advise personnel who produce the following: targeting effects, master air attack plan (MAAP), air tasking order (ATO), and airspace control order (ACO). In addition, JAs and paralegals participate in target list development, production of the MAAP, drafting special instructions (SPINS), publishing the ACO, and the final daily ATO.²⁶

JAs review proposed tactics, targets engaged, and weapons employed for compliance with international law including law of war, domestic law, ROE, and applicable national policy.²⁷ **Although the ultimate decision on whether to strike a target rests with the commander, JAs review proposed targets, identify legal considerations, and provide recommendations.**

COMBAT OPERATIONS DIVISION

Within the combat operations division, JAs and paralegals concentrate on evaluating the legality of employment options designed to support the overall assigned objectives. Accordingly, JAs provide legal advice concerning personnel recovery operations and attacks on dynamic targets. Additionally, JAs play a significant role in ensuring the appropriate approval for the strike has been obtained from the targeting engagement authority and higher-level authority, as required.

Commanders should integrate JAs and paralegals into combat operations processes so orders will not unnecessarily restrict lawful actions or inadvertently permit unlawful activities.

The involvement of JAs in targeting processes is especially important in large-scale combat operations when rapid decisions are required over sustained periods. JAs and paralegals should be included in targeting battle rhythm events and maintain situational

²⁶ For additional information on the JAOP, MAAP, ATO, ACO, and SPINS, see JP 3-30, *Joint Air Operations*.

²⁷ See *DoD Law of War Manual*, and AFI 51-401, *The Law of War*, for additional information.

awareness to identify legal issues resulting from the execution of planned (deliberate) or time-sensitive (dynamic) operations.

Because of the urgent nature of dynamic targeting, JAs should be prepared to provide critical legal advice under significant time constraints. JAs and paralegals need to be forward-thinking, anticipating potential legal issues for time-sensitive targets. JAs may be required to operate in areas with limited or degraded digital communications infrastructure. JAs assess targets and form sound legal opinions based on national and other policies, ROE, and the law of war to support the commander's objectives.

Regardless of the type of targeting, deliberate or dynamic, the law of war and ROE apply any time a commander authorizes the use of force against a target.

If a possible law of war violation or friendly fire incident is discovered, reported, or reasonably suspected, commanders should immediately involve their JAs and paralegals.²⁸ Upon receipt of an initial report of any suspected law of war violation or friendly fire incident, JAs and paralegals guide the operational chain of command on measures to ensure the preservation of evidence and review all available information. They assist the commander in determining if the information is credible and thus is a reportable incident. JAs and paralegals help initiate or assist in investigations. If a higher authority or regulation mandates a formal investigation, JAs advise and assist the cognizant military criminal investigative organization.

AIR MOBILITY DIVISION

Within the air mobility division, legal officers advise on actions taken to plan, coordinate, task, and execute air mobility operations. For example, JAs may advise the air mobility control team on interpretations of international agreements, risk to ground objects from airdrops, overflight rights, and landing rights.

OTHER OPERATIONAL LEGAL SUPPORT

Appendix A highlights the legal subject matter experience addressed by AFJAG Corps personnel in past operations. Other, more in depth, operational legal support areas such as military justice, claims, fiscal and contracting issues, base defense, non-combatants and non-combatant property, and contractors and other civilians accompanying the force can be found in Appendix B.

²⁸ See AFI 51-401, *The Law of War*, for additional information.

CHAPTER 3: JUDGE ADVOCATE STAFF ROLE IN RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE DEVELOPMENT

RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE

JAs serve as the principal advisor to the air component commander for ROE and rules for the use of force (RUF). JAs assist in their development and provide support to operations planners through the ROE and RUF request process and then ROE and RUF application.

- ★ ROE governs the use of force, reflecting policy direction from higher civilian and military authorities. ROE are defined as “directives issued by a competent military authority that delineate the circumstances and limitations under which US forces will initiate and/or continue combat engagement with other forces encountered.”²⁹ ROE restrain forces’ actions to ensure they are consistent with domestic and international law, national policy, and objectives. ROE are based upon domestic and international law, history, strategy, political concerns, the information environment, and a vast wealth of operational wisdom, experience, and knowledge provided by military commanders and operators.
- ★ RUF applies when DoD forces are performing civil support missions and routine service functions, including force protection within the US and its territories, or when DoD forces are performing law enforcement or security duties within (when permitted by the *Posse Comitatus Act*) or outside the US.³⁰

PURPOSES

ROE and RUF ensure that any use of force is consistent with national security and policy objectives. Used chiefly to regulate the use of force, ROE and RUF either allow or limit the ability and means to employ force. ROE serves political, military, and legal purposes and defines the parameters within which US personnel accomplish their missions. The ROE also control the transition from peace to war and vice versa. They ensure national policy and objectives are reflected in the actions of AFFORs. They also set constraints on a commander’s actions, so they are consistent with domestic and international law and national policy. ROE provide a mechanism to facilitate planning and help ensure the appropriate military capability is applied prudently. They often reflect collateral limitations that restrict the use of force far beyond what is required by the law of war. ROE similarly serve the purpose to prevent friendly fire incidents, excessive civilian casualties, national/coalition political damage, or mission failure. History has demonstrated that to be most effective, **ROE and RUF should represent a confluence of legal considerations, national policy objectives, and operational concerns.** When the actions of military

²⁹ See JP 3-84, *Legal Support*, and Chairman, Joint Chiefs of Staff Instruction (CJCSI) 3121.01B, *US Standing ROE*, for additional information.

³⁰ For additional information on considerations to assist the commander with ROE development, see AFDP 3-27, *Homeland Operations*.

personnel and units are framed by the disciplined application of force through effective ROE, commanders can make sound judgments and select the best possible COA to accomplish the mission.

ROE ensures that US forces comply with the law of war. AFFORs adhere to the law of war and embrace the principles set forth, including the principles of military necessity, humanity, proportionality, and distinction. ROE are an important mechanism to assist commanders in fulfilling their obligations under the law of war and are often used to reinforce certain law of war principles.

Absent specific operational necessity, ROE and RUF should never impede US forces' inherent right of self-defense. ROE and RUF for US forces should not limit a commander's inherent authority and obligation to use all necessary means available to act in self-defense of the commander's unit and other US forces in the vicinity. The right and obligation of unit self-defense should never be compromised. US forces do not have to be the subject of a hostile act before responding in self-defense. US forces may respond in self-defense to demonstrated hostile intent against the US, US forces, or other designated persons or property. Commanders at every echelon are responsible for establishing or requesting ROE for mission accomplishment that complies with the ROE of senior commanders and the US Standing ROE.

PRINCIPLES

By following the ROE and RUF principles outlined below, AFFORs' missions are less likely to be compromised, and US political and military objectives are more likely to be achieved:

- ★ ROE and RUF should complement US interests and military objectives.
- ★ ROE and RUF should not be too specific or restrictive.
- ★ ROE and RUF should be current and responsive to change.
- ★ ROE and RUF should not diminish operational effectiveness.
- ★ ROE and RUF should permit the timely and appropriate use of force.

Effective ROE and RUF allow commanders to apply the tenets of airpower to support national security objectives without constraining forces' capabilities. To maximize operational effectiveness, ROE should:

- ★ Be transparent and clearly linked to mission accomplishment.
- ★ Be continually briefed to all Airmen by commanders, warfighters, and JAs.
- ★ Be tailored to the audience and easy to understand, remember, and apply.
- ★ Be constantly reviewed for modification or amplification.

- ★ Be simple, clear, brief, and seamless.
- ★ Avoid excessively qualified language.
- ★ Avoid mention of strategy or doctrine.
- ★ Avoid restating the law of war.

Modifying ROE and RUF. JAs and paralegals assist commanders in modifying or requesting changes to the ROE and RUF. With few exceptions, ROEs are fundamentally permissive and allow commanders to modify or request changes to them to support mission accomplishment. Unlike the permissive nature of ROE, RUF for special weapons and tactics are typically much more restrictive than ROE. At various levels in the operational chain of command, ROE supplemental measures may be approved to allow or limit the use of force for mission accomplishment or self-defense. JAs and paralegals assist commanders in determining appropriate ROE and RUF and recommend changes when necessary. Commanders should seek a modification to ROE and RUF through the chain of command. Modification and clarification may be warranted when the ROE or RUF are inadequate, faulty, create the risk of friendly fire incident, or hinder a commander's ability to carry out the mission.

Implementing ROE and RUF. USAF commanders expect JAs to know and fully advise AFFORs on ROE and RUF.

RULES OF ENGAGEMENT CONSIDERATIONS

ROEs provide the basic circumstances and limitations for combat engagement.³¹ ROEs also answer many questions subordinate commanders and forces may have, such as:

- ★ When can US forces and others be defended?
- ★ What can be attacked?
- ★ How can it be attacked?
- ★ Where can it be attacked?
- ★ When can it be attacked?
- ★ Whose permission is needed to attack?

When US Forces are involved in multinational operations additional considerations must be explored. First, have military commanders or policymakers agreed upon ROE for multinational operations. If there is established ROE of multinational forces, does it permit the same degree of individual self-defense and unit self-defense as the US

³¹ See JP 3-84, *Legal Support*, for additional information.

Standing ROE? Finally, any partner nations or allied forces' ROE caveats or self-defense ROE need to be considered?

ROE are not a substitute for guidance, intent, judgment, or planning. ROE development is a collaborative process involving commanders, operators, JAs, and others. ROE development is an integral part of operations planning, including branch and sequel plans. ROE development begins with mission analysis. ROE instructions are set out in the commander's initial planning guidance. ROE development is tied to the COA development. COA analysis includes ROE refinement.

US ROEs are fundamentally permissive. However, the ROEs during IW are usually more restrictive than in traditional war. JAs should brief current ROE at every joint task force update and monitor ROE training and interpretations. JAs need to assist commanders in using serial ROE messages and not appendices. When a commander requests certain ROE, JAs can facilitate the justification and reasoning for each request. It is best to resolve ROE disputes before the fight. Establishing a close working relationship between the commander, operators, and JA is essential for a successful ROE game plan.

APPENDIX A: LEGAL SUBJECT MATTER EXPERTISE FOR AIR FORCE OPERATIONS

JAs provide decision-makers at all levels with the analysis needed to evaluate options, assess risks, and make decisions in accordance with the law. As a result, during any deployment, Airmen usually face legal issues comparable to those from previous operations. While not exhaustive, the list of topics below highlights the types of legal issues addressed by AFJAG Corps personnel in the past:³²

- ★ Administrative law, including investigations.
- ★ Air and space law.
- ★ Business, commercial, and financial law.
- ★ Claims.
- ★ Command Relationships (COMREL).
- ★ Contract law.
- ★ Criminal law.
- ★ Cyber law.
- ★ Domestic operations law.
- ★ Environmental law.
- ★ Ethics and standards of conduct.
- ★ Fiscal law.
- ★ Intellectual property law.
- ★ Intelligence law.
- ★ International, comparative, and foreign law.
- ★ International humanitarian law.
- ★ Labor and civilian personnel law.
- ★ Law of the sea.

³² For additional information on specific functional legal issues, see *The Law of Air, Space, and Cyber Operations*.

- ★ Law of war.
 - ★ Legal assistance.
 - ★ Rule of law/legal training.
 - ★ Litigation.
 - ★ Medical law.
 - ★ Military justice.
 - ★ Military personnel law, including adverse actions.
 - ★ Operational law, including operations in the information environment.
 - ★ Policy positions and status of the International Committee of the Red Cross.
 - ★ Real property law.
 - ★ Regulatory law.
 - ★ Tax law.
 - ★ Transportation law.
 - ★ Telecommunications law.
-

APPENDIX B: OTHER OPERATIONAL LEGAL SUPPORT

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? HN?
- ★ How does a COMAFFOR handle “joint justice” issues?
- ★ Who is the senior USAF officer?
- ★ What control measures are or should be imposed (e.g., US Central Command or other Combatant 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)?
- ★ 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?
- ★ Should a member suspected of a crime under the *UCMJ* be redeployed for processing?
- ★ Who can discipline Guard and Reserve personnel?
- ★ What coordination must occur when a deployed commander contemplates the appropriate disposition of a Guard or Reserve-member incident?
- ★ Can Guard or Reserve personnel 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 DoD Instruction 5515.08, *Assignment of Claims Responsibility*?

- ★ What do applicable international agreements say about claims liability and processing?
- ★ What US statutory and or regulatory law, if any, is applicable to presented claims?
- ★ Where will a claims office be set up to receive and process claims from HN personnel?
- ★ What JA office is responsible for investigating and adjudicating claims?
- ★ How will a JA member travel if travel is necessary for a claim's investigation?
- ★ Are there any unique tort provisions in the HN law? Is there a comparative law study?
- ★ What do applicable international agreements say about claims liability and processing?
- ★ 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 the acquisition of goods and services?
- ★ What do applicable international agreements say about building or repairing items in the HN?
- ★ Do contracts include claims provisions?
- ★ What is the US obligation under the claims provision?
- ★ What support can US forces provide HN and foreign armed forces?
- ★ Is there an acquisition and cross-servicing agreement between the US and HN or other foreign forces?

BASE DEFENSE

The following are legal issues concerning Airmen performing base defense duties:

- ★ Who is performing the base defense duties? Are these USAF 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? What are the legal issues regarding using such weapons (e.g., mortars, ammunition, incendiaries, tear-gas or riot control agents, counter-small unmanned aircraft systems, or remote weapon systems)?
- ★ 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 legal issues are 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 HN 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 USAF transfer detainees to others (e.g., other US forces [typically Army] or the HN)?
- ★ Do Airmen understand how to treat HN civilians? Can Airmen detain them? For what? How? For how long? What do Airmen do with them once they get them? What if the HN is unable or unwilling to prosecute or control them?
- ★ What are the legal issues associated with using intelligence, surveillance, and reconnaissance to support operations in different operating environments: the US, in an HN, and in a contested environment?

NON-COMBATANTS AND NON-COMBATANT PROPERTY

- ★ Have medical personnel and chaplains been properly identified, and do they exclusively perform non-combatant duties?
- ★ Are non-combatant facilities, equipment, and vehicles used to support combatant activities?
- ★ Are non-combatant 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 C2 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 medical urgency and use a process such as triage (i.e., screening patients to determine priority medical needs) to assist the wounded, sick, or injured methodically?³³

CONTRACTORS AND OTHER CIVILIANS ACCOMPANYING THE FORCE

- ★ What is their status?
 - ★ Who is responsible for protecting them? Can they be armed for their 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, or 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?
-

³³ For additional information on humane treatment and care, see *DoD Law of War Manual*.

APPENDIX C: PLANNING AND EXECUTION DUTIES AND RESPONSIBILITIES

JOINT PLANNING PROCESS FOR AIR DUTIES AND RESPONSIBILITIES

COMAFFOR/JFACC	Role of Legal Counsel
Step I: Initiation	
<ul style="list-style-type: none"> • Assign planning tasks. • COMAFFOR support planning tasks. • JFACC employment planning tasks: <ul style="list-style-type: none"> ◦ Set an initial planning timeline. ◦ Issue planning guidance. • COMAFFOR support planning guidance. • JFACC employment planning guidance. 	<ul style="list-style-type: none"> • Review JFC tasking and planning documents. • Review applicable laws, policies, treaties, and agreements. • Prepare for future integration with planners by identifying planning battle rhythm events and schedules.
Step II: Mission Analysis	
<ul style="list-style-type: none"> • Review JFC's mission and intent. • Conduct intelligence preparation of the operational environment. • Review friendly situation. • Review enemy situation and COAs. • Conduct center of gravity analysis. • Complete COMAFFOR and JFACC mission and intent statements. 	<ul style="list-style-type: none"> • Participate in the core planning cell of the planning group. • Identify legal support requirements. • Contact legal counterparts at higher, lower, and adjacent headquarters at the earliest opportunity and establish the basis for concurrent planning. • Review additional planning documents. • Assist the COMAFFOR/JFACC by advising on legal issues relating to known facts, current status, and/or conditions. • Determine specified, implied, and essential tasks. • Assist the COMAFFOR/JFACC by identifying legal issues that may impose operational limitations. Provide guidance on legal issues that have the potential to impact military end state, objectives, and initial effects, as well as those that may impact commander's critical information requirements (CCIRs). • Research applicable domestic, international, and foreign laws,

	<p>policies, treaties, and agreements. Summarize relevant legal considerations (authorities, restraints, and constraints) and provide them to the planning group.</p> <ul style="list-style-type: none"> Consider the assigned mission, current situation, next higher-level commander's intent, UN Security Council Resolutions, standing ROE/RUF, approved supplemental ROE, multinational, and fiscal constraints.
Step III: COA Development	
<ul style="list-style-type: none"> Refine operational approach and determine decision points and CCIRs. 	<ul style="list-style-type: none"> Review staff estimates and participate in COA development. Assist planners in identifying authorities for each COA.
Step IV: COA Analysis and Wargaming	
<ul style="list-style-type: none"> Determine COA evaluation criteria. Coordinate wargame method. Coordinate evaluation criteria. Conduct the wargame. Refine COAs. Determine branch/sequel requirements. Determine the strengths and weaknesses of COAs. 	<ul style="list-style-type: none"> Assist the COMAFFOR/JFACC and staff in evaluating each COA to ensure it is acceptable at the operational and tactical levels (i.e., worth the risks and within legal parameters). Consider the domains (air, land, maritime, and space) and the information environment, including cyberspace, and all the joint functions (movement and maneuver, intelligence, fires, sustainment, protection, and C2). List the ROE/RUF and supplement measures required to support each COA and test each COA to ensure it is acceptable (i.e., within the use of force limitations).
Step V: COA Comparison	
<ul style="list-style-type: none"> Coordinate comparison method. Evaluate decision matrix. Determine preferred COA. 	<ul style="list-style-type: none"> Assist the COMAFFOR/JFACC and staff in identifying the COA with the

	highest probability of accomplishing the mission.
Step VI: COA Approval	
<ul style="list-style-type: none"> • Conduct COA decision briefing. • Select COA. • Get JFC approval on selected COA. 	<ul style="list-style-type: none"> • Assist the COMAFFOR/JFACC staff with reviewing and ensuring important supporting information for COA decision briefing. • Review COA with higher headquarters/strategic guidance to confirm conformity.
Step VII: Plan or Order Development	
<ul style="list-style-type: none"> • Refine selected concept of operations. • Develop JAOP with appropriate annexes (JFACC). • Provide COA development guidance and review with staff estimates and enemy COAs. • Develop operational objectives, tactical objectives, and tasks. • Develop friendly air COAs including narratives and graphics. • Develop a USAF support plan with appropriate annexes (COMAFFOR). 	<ul style="list-style-type: none"> • Review concept of operations for legal sufficiency and compliance with applicable rules and requirements.

JOINT AIR TASKING CYCLE (EXECUTION) DUTIES AND RESPONSIBILITIES

COMAFFOR/JFACC	Role of Legal Counsel
Stage 1: Objectives, Effects, and Guidance	
<ul style="list-style-type: none"> • Review JFC guidance, JAOP, JFACC guidance, and enemy situation. • Develop air apportionment recommendations and get approval from JFC. • Produce an Air Operations Directive (AOD) that describes the air strategy for the ATO Period. 	<ul style="list-style-type: none"> • Review JFC, JAOP, and JFACC guidance and AOD for legal sufficiency and compliance with applicable rules and requirements.

Stage 2: Target Development	
<ul style="list-style-type: none"> • Prioritize targets based on effects that support the JFC's objectives. • The product of this step is the joint integrated prioritized target list. 	<ul style="list-style-type: none"> • Participate in target development and approval meetings. • Monitor target development for compliance with CJCSI 3370.01 series. • Review targets for legal sufficiency and compliance with the law of war, applicable ROE/RUF, and other controlling guidance.
Stage 3: Weaponizing and Allocation	
<ul style="list-style-type: none"> • Targets are weaponized to include recommended aimpoints, weapon systems, and munitions. • Evaluate collateral damage concerns and develop MAAP. • Match resources to targets. • Conduct MAAP briefing. 	<ul style="list-style-type: none"> • Monitor collateral damage estimation process for compliance with CJCSI 3160.01D. • Review target packages and advise on collateral damage concerns. • Attend MAAP briefing and brief or assist staff with briefing and legal considerations. • Review deliberate targets placed on ATO for legal sufficiency.
Stage 4: ATO Production and Dissemination	
<ul style="list-style-type: none"> • Construct, publish, and disseminate the ATO and SPINS. • Finalize ACO. 	<ul style="list-style-type: none"> • Review SPINS and changes to SPINS for consistency with applicable ROE/RUF, accounting for changes in authorities and the operational/tactical environment. • Attend airspace control final approval meeting and review ACO for legal considerations.
Stage 5: Execution Planning and Force Execution	
<ul style="list-style-type: none"> • Direct execution of air capabilities. • Respond to moving targets or changing priorities. 	<ul style="list-style-type: none"> • Provide on-call support during all phases of execution. • Monitor required changes, moving targets, or changing priorities to provide immediate response to changes impacting compliance with

	the law of war, applicable ROE/RUF, and other controlling guidance.
Stage 6: Assessment	
<ul style="list-style-type: none"> Evaluate the results of joint air operations to determine impacts on future operations. 	<ul style="list-style-type: none"> Advise on legal considerations. Determine legal impacts on future operations resulting from the evaluation of the results of joint air operations.

APPENDIX D: MISSION READINESS OF JUDGE ADVOCATE PERSONNEL

The mission requirements of a location determine the need for legal services. Mission readiness of any AFJAG Corps activity should be evaluated in terms of home station operations, expeditionary legal support, and home station augmentation. TJAG will determine the appropriate level of support required for each home station and expeditionary requirement.

EXPEDITIONARY LEGAL SUPPORT

Expeditionary legal support includes the personnel and resources that provide legal support to forward-deployed forces, tailored to meet expeditionary requirements. Expeditionary legal support also includes legal services provided through reachback. Reachback requires that home station resources (e.g., experts in various fields of practice, HN advisors, information, and equipment) be prepared and available to support forward-deployed forces through the chain of command.

ESSENTIAL LEVEL OF SERVICES AND CONTINGENCY MITIGATION PLANNING

Each AFJAG Corps activity determines the essential level of services to fulfill mission requirements by taking mission essential tasks and mandatory performance standards into account. SJAs should closely monitor their activity's essential service levels and plan accordingly for potential changes (possibly caused by deployments or emergencies resulting in minimum manning or minimal resource situations). Planning of AFJAG Corps activities should alleviate possible repercussions and assure full-time mission-essential task accomplishment.

JUDGE ADVOCATE MISSION READINESS PREPARATION

Although not an exhaustive list, JAs and paralegals may participate in any or all the following activities to prepare for support operations:

- ★ Continuing legal education through civilian, joint, and multinational sources.
 - ★ Professional military education through DAF, joint, and multinational sources.
 - ★ Military engagement activities with domestic and foreign agencies and activities.
 - ★ Comparative law studies and interactions with HN legal representatives.
 - ★ DAF, joint, and multinational exercises and training.
 - ★ Operations planning involvement to direct, control, and sustain USAF operations.
 - ★ Evaluation of legal principles and application to missions, weapons systems, and tactics.
-

APPENDIX E: OVERVIEW OF US CODE SECTIONS AFFECTING THE DEPARTMENT OF DEFENSE

Federal law is codified and compiled in USC sections, which comprise 53 different titles that deal with different areas of the law. An overview of different USC titles impacting DoD operations follows:

★ TITLE 5-GOVERNMENT ORGANIZATION AND EMPLOYEES

★★ Title 5 has four parts: The Agencies Generally, Civil Service Functions and Responsibilities, Employees, and Ethics Requirements.

★★ Title 5 generally includes federal law outlining the role of government organizations and their employees and includes the Freedom of Information Act, Privacy Act, and ethics in government.

★ TITLE 10-ARMED FORCES

★★ Title 10 has six subtitles: General Military Law, Army, Navy and Marine Corps, Air Force and Space Force, Reserve Components, and Alternative Military Personnel Systems.

★★ Title 10 generally includes federal law that impacts the DoD, the individual military departments, the Joint Chiefs of Staff, the CCDRs, and all military issues.

★★ When discussing regular and reserve component forces, regular component forces, and AFR forces are sometimes referred to as “Title 10” forces.

★ TITLE 18-CRIMES AND CRIMINAL PROCEDURE

★★ Title 18 addresses federal crimes and criminal procedure.

★★ Crimes alleged to have been committed by US military personnel are primarily addressed through the *UCMJ* in Title 10, Chapter 47.

★ TITLE 32-NATIONAL GUARD

★★ Title 32 has five subchapters addressing: organization, personnel, training, service, supply and procurement, and homeland defense activities.

★★ Title 32 generally addresses the federal operations of the National Guard.

★★ State law is applicable when acting in a state capacity under Title 32 or on State active-duty status.

★★ When discussing active and reserve component forces, National Guard forces are sometimes referred to as “Title 32” forces when acting in their state capacity.

★ TITLE 50-WAR AND NATIONAL DEFENSE

★★ Title 50 has over 58 chapters and covers an array of activities. Of note, it covers intelligence agencies and guidelines and the Servicemembers Civil Relief Act.

REFERENCES

All websites accessed 31 October 2024.

Doctrine can be accessed through links provided at: <https://www.doctrine.af.mil/>

US AIR FORCE DOCTRINE: <https://www.doctrine.af.mil/>

- ★ AFDP 1, [*The Air Force*](#)
- ★ AFDP 2-0, [*Intelligence*](#)
- ★ AFDP 3-0, [*Operations*](#)
- ★ AFDP 3-01, [*Counterair Operations*](#)
- ★ AFDP 3-03, [*Counterland Operations*](#)
- ★ AFDP 3-04, [*Countersea Operations*](#)
- ★ AFDP 3-05, [*Special Operations*](#)
- ★ AFDP 3-12, [*Cyberspace Operations*](#)
- ★ AFDP 3-13, [*Information in Air Force Operations*](#)
- ★ AFDP 3-14, [*Air Force Space Support*](#)
- ★ AFDP 3-27, [*Homeland Operations*](#)
- ★ AFDP 3-40, [*Counter-Weapons of Mass Destruction Operations*](#)
- ★ AFDP 3-50, [*Personnel Recovery*](#)
- ★ AFDP 3-70, [*Strategic Attack*](#)
- ★ AFDP 3-72, [*Nuclear Operations*](#)
- ★ AFDP 4-0, [*Combat Service Support*](#)

JOINT DOCTRINE

Joint Electronic Library (JEL): <https://www.jcs.mil/Doctrine/>

JEL+: <https://jdeis.js.mil/jdeis/index.jsp?pindex=2>

- ★ JDN 1-22, [*Joint Force in Strategic Competition*](#)
- ★ JP 1, Vol 1, [*Joint Warfighting*](#)
- ★ JP 1, Vol 2, [*The Joint Force*](#)
- ★ JP 3-12, [*Joint Cyberspace Operations*](#)
- ★ JP 3-14, [*Joint Space Operations*](#)
- ★ JP 3-30, [*Joint Air Operations*](#)
- ★ JP 3-84, [*Legal Support*](#)

MISCELLANEOUS PUBLICATIONS

- ★ AFI 1-2, [*Commander's Responsibilities*](#)
- ★ AFI 51-110, [*Professional Responsibility Program*](#)
- ★ AFI 51-401, [*The Law of War*](#)
- ★ AFI 51-402, [*International Law*](#)
- ★ CJCSI 3121.01B, [*Standing Rules of Engagement/Standing Rules for the Use of Force US Forces*](#)
- ★ CJCSI 3160.01, [*No-Strike and the Collateral Damage Estimation Methodology*](#)

- ★ CJCSI 3370.01, [Target Development Standards](#)
 - ★ DAFI 51-101, [The Air Force Judge Advocate General's Corps Operations, Accessions and Professional Development](#)
 - ★ DAFI 51-403, [International Agreements](#)
 - ★ DAFI 51-509, [Appointment to and Assumption of Command](#)
 - ★ [DoD Foreign Clearance Guide](#)
 - ★ DoD Instruction 5515.08, [Assignment of Claims Responsibility](#)
 - ★ DoD Instruction 5530.3, [International Agreements](#)
 - ★ [DoD Law of War Manual](#)
 - ★ [The Law of Air, Space, and Cyber Operations](#)
 - ★ [Servicemember's Civil Relief Act](#)
 - ★ Title 10, USC §806, [Judge Advocates and Legal Officers](#)
 - ★ Title 10, USC §2017, [Armed Forces](#)
 - ★ Title 10, USC §9037, [Judge Advocate General, Deputy Judge Advocate General: appointment; duties](#)
 - ★ Title 18, USC §2017, [Crime and Criminal Procedure](#)
 - ★ Title 18, USC §1385, [Posse Comitatus Act](#)
 - ★ Title 32, USC §2017, [National Guard](#)
 - ★ Title 50, USC §2017, [War and National Defense](#)
-