



LEGAL AND LAW ENFORCEMENT CONSIDERATIONS DURING FORCE PROTECTION PLANNING AND EXECUTION

Last Updated: 2 January 2019

Force protection (FP) fundamentals are applied in many different operational environments and organization command structures. In the course of planning, commanders should maintain an awareness of legal constraints that may affect operations. Information relevant to the use of force is contained in international law, US law, host nation law, the law of war, and established restrictions of movement, quarantine, and the [rules of engagement](#) or [rules for the use of force](#). Together, these laws and rules regulate the status and activities of forces across the range of military operations. Below are some legal requirements a commander should consider, depending on where force protection measures are being implemented.

Types of Jurisdiction

Depending upon where an incident occurs on an installation or within the [base boundary](#), jurisdiction may differ as it is rare for an installation to have just one type of jurisdiction throughout. For instances involving areas under government control where the Air Force does not exercise exclusive federal jurisdiction, commanders should work closely with the staff judge advocate and relevant authorities to establish protocols for handling civilians. When an installation is located within a foreign nation, jurisdiction may be governed by the terms of a [status-of-forces agreement](#) or other agreement with the particular host nation. Likewise, in these areas where authority and jurisdiction constraints prevent organic security forces from patrolling or otherwise occupying areas outside the installation's recognized base boundary but within the [base security zone](#), commanders should apply [risk management](#) to minimize risk exposure to assets and personnel. They should also coordinate FP requirements with local authorities and adjacent friendly forces.

Legal Considerations for Homeland Operations

In the US, commanders publish and enforce regulations to protect installation resources and force protection intelligence (FPI) is vital to painting an accurate picture for a commander to better anticipate and plan against threats. However, due diligence should be given to intelligence oversight issues when carrying out the FPI process. The duties and obligations placed on Department of Defense (DOD) intelligence organizations to

protect the rights of individuals stem from the US Constitution, [Presidential Executive Order 12333](#), and DOD Manual 5240.01, [Procedures Governing the Conduct of DOD Intelligence Activities](#), which spells out how the Presidential Executive Order applies to defense intelligence activities. In a similar manner, DOD members not part of the intelligence community have obligations stemming from the US Constitution, Title 5 of the US Code (the "Privacy Act"), and DOD Directive 5200.27, [Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense](#). Specific Air Force guidance is contained in Air Force Instruction (AFI) 14-104, [Oversight of Intelligence Activities](#).¹⁴ Domestic use of unmanned aircraft systems for force protection raises unique legal and policy issues which require Secretary of Defense approval. Before using unmanned aircraft systems for domestic FP, commanders should consult with their legal advisors to ensure they have permission to do so. The primary objective of a commander's intelligence oversight program is to ensure units and staff organizations conducting intelligence activities do not infringe on or violate the rights of US persons. Commanders should implement safeguards to ensure the conduct of force protection activities conform to US law, executive orders, and DOD directives. These tools ensure that FP operations do not violate intelligence oversight directives. Likewise, commanders should understand the degree of control they have over their installations, and be familiar with the concepts of title and jurisdiction.¹⁵

In the US, commanders are responsible for protecting installation resources, especially personnel. Force health protection measures such as restriction of movement (ROM) are an important aspect to this protection. Due diligence should be given to planning for ROM in regard to legal and law enforcement implications on an installation when carrying out quarantine or isolation measures.¹⁶ ROM is used to prevent the introduction, transmission, and spread of communicable diseases or any other hazardous substances that pose a threat to public health and safety. These references also authorize the Director of the Centers for Disease Control and Prevention (CDC), through delegated authority of the Secretary of the U.S. Department of Health and Human Services, to take public health measures that the Director deems necessary regarding facilities owned by the Federal Government within the US.¹⁷ The Director of the CDC is also empowered to provide further guidance on public health measures that may include oral authorization for military commanders to quarantine individuals not within their scope of authority until a formal written order is issued by the CDC. Commanders should implement safeguards and guidance to address law enforcement

¹⁴ Air Force oversight of intelligence activities not only applies to intelligence organizations but also extends to non-intelligence units and staffs when they are assigned an intelligence mission and to personnel doing intelligence work as an additional duty, even if those personnel are not assigned or attached to an intelligence unit or staff. See AFI 14-104, [Oversight of Intelligence Activities](#).

¹⁵ For a more detailed discussion of the types of jurisdiction in the homeland, see [The Military Commander and the Law](#). Sources for the DOD intelligence oversight program and the types of jurisdiction come from multiple sources: Presidential [Executive Order 12333](#), DOD Manual 5240.01; [US Constitution, Art. I, §8, cl. 17](#); [US Constitution, Art. VI, cl.2](#); [40 U.S.C. §§3111 and 3112](#); [Greer v. Spock, 424 US 828 \(1976\)](#); and AFI 32-9001, [Acquisition of Real Property](#).

¹⁶ Quarantine and isolation are types of restriction of movement that can in certain circumstances be imposed by a military commander for individuals within the scope of the authority of the commander.

¹⁷ Executive Order 13295.

and legal requirements to protect personal rights and at the same time protect installation resources. Specific Air Force guidance is contained in AFI 10-2519, [Public Health Emergencies and Incidents of Public Health Concern](#).

When encountering FP issues in the US, commanders should consider the unique laws, challenges and issues for [homeland operations](#).
