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FOR DOCTRINE DEVELOPMENT AND EDUCATION

ANNEX 3-84 LEGAL SUPPORT

CATALOG OF DOCTRINE TOPICS

Last Updated: 24 January 2020

Introduction to Legal Support

Air Force Judge Advocate General Corps (AFJAGC) and Command Fundamentals
- Air Force Legal Readiness
- Command Authority
- Commander, Air Force Forces Legal Roles and Responsibilities
- AFJAGC Organization
- Staff Judge Advocate to the Commander, Air Force Forces Organization
- Integration of Legal Support in an Air Operations Center

AFJAGC Support to Air Force Operations
- Role of AFJAGC in Operations Planning
- Role of AFJAGC in Rules of Engagement and Rules for the Use of Force Development
- Legal Review of Command and Control Issues

Appendix A: Legal Subject Matter for Air Force Operations

Appendix B: Legal Considerations in Air Force Operations

Appendix C: Planning and Execution Responsibilities

Appendix D: Legal Readiness Considerations

Appendix E: Mission Readiness of AFJAGC Personnel

Appendix F: Rules of Engagement Considerations

Appendix G: Overview of US Code Sections Affecting the Department of Defense

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ANNEX 3-84 LEGAL SUPPORT

INTRODUCTION TO LEGAL SUPPORT

Last Updated: 24 January 2020

The Air Force's legal support doctrine is constantly evolving. It should guide us to effectively organize and employ through the complexities of employing airpower in steady-state operations, and help us re-learn the lessons of large-scale peer and near-peer conflict in contested environments. As we continuously improve our airpower capabilities and capacities in air, space, and cyberspace, our ability to revolutionize legal support operations and incorporate new concepts and technologies will identify new best practices that shape future legal support doctrine. The range of military operations across the competition continuum, from peacetime through large-scale combat operations, is always a consideration when determining the best practices for our Air Force; consideration of peer and near-peer competition is a continuing necessity for doctrine as the Air Force supports the joint fight. Every Airman is an innovator and is integral to this continuous development process – we must all connect, share, and learn together to succeed.

Annex 3-84, *Legal Support*, establishes Air Force doctrine focused on legal advice and considerations for Air Force operations. The Air Force, like other Services, continues to operate in an increasingly complex environment around the world, demanding nothing less than the very best in legal capability. This document represents best practices and other sanctioned ideas regarding legal aspects of Air Force operations. For over 70 years, the Air Force has possessed organic legal support in both the Office of the General Counsel and the Office of The Judge Advocate General (AF/JA). On 25 June 1948, the US Congress established The Judge Advocate General (TJAG), and, a year later, the Air Force Chief of Staff designated Air Force officers—who are attorneys—to serve as judge advocates. In 2003, the Judge Advocate General's Department was renamed the "Judge Advocate General's Corps" by order of the Secretary of the Air Force.

The Office of The Judge Advocate General (AF/JA) and the Office of the General Counsel of the Department of the Air Force (SAF/GC) work together to serve the Department of the Air Force. The relationship between the Office of the General Counsel of the Department of the Air Force (SAF/GC) and the Office of The Judge Advocate General (AF/JA) is based on the complementary roles that Congress intended for these offices when it established SAF/GC as part of the Office of the

Secretary of the Air Force and TJAG as part of the Air Staff. Both are legal advisors to SECAF and CSAF, with right of direct access and the ability to provide independent legal advice to those officials. SAF/GC and TJAG are independent of each other for the purposes of rating, reporting, and the accomplishment of their responsibilities. They perform their missions in an environment of collaboration and information sharing.

Legal support to Air Force commanders is critical to mission success. Air Force commanders turn to their judge advocates for insight into the law and its impact on Air Force operations. Proper legal counsel enhances commanders' successful decision-making ability, aiding in mission success.

Future legal support operations in a contested environment against a peer or near-peer adversary will require the air component to be more adaptive, resilient, and agile in its deployment and employment plans and leadership philosophies. The Air Force should be ready to provide resilient and redundant legal support capabilities in an environment of peer competition.

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ANNEX 3-84 LEGAL SUPPORT

THE AIR FORCE JUDGE ADVOCATE GENERAL'S CORPS AND COMMAND FUNDAMENTALS

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Legal roles and responsibilities of the commander, Air Force forces (COMAFFOR) include mission accomplishment, compliance with the law, and maintaining domestic and foreign contracts. Because the COMAFFOR is normally dual-hatted as the joint or combined force air component commander (JFACC or CFACC), the requirements and responsibilities of the COMAFFOR and JFACC or CFACC are inextricably linked. This document informs Air Force commanders about 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 COMAFFOR. When the doctrine pertains to matters primarily concerning joint functional component commander duties, like the integration of legal support in the air operations center, this document will address the JFACC, even though the JFACC and the COMAFFOR are normally the same person.

For additional information, see *The Military Commander and the Law*.

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ANNEX 3-84 LEGAL SUPPORT

AIR FORCE LEGAL READINESS

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All military missions require compliance with a wide variety of laws, rules, and regulations. A commander's ability to lead, to maintain order, and to sustain the confidence of the public requires a solid legal foundation. Commanders depend on legal personnel for timely and accurate legal guidance throughout the full spectrum of conflict; from peacetime to full spectrum combat against a peer / near-peer adversary. In relation to mission readiness, legal readiness involves the ability of individuals and their organizations to deal with the legal aspects of the operational environment.

Appendix D offers the commander additional legal readiness considerations.

COMMAND AUTHORITY

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The commander, Air Force forces (COMAFFOR) is responsible for ensuring that Air Force forces understand and comply with legal requirements. **The COMAFFOR's staff judge advocate (SJA) is responsible for providing timely and effective legal advice to the COMAFFOR.** Effective discharge of their responsibility requires commanders to understand their legal responsibilities and the capabilities of an SJA. A commander's legal authority is derived from the Constitution and from statutes enacted by Congress. The legal directives that provide for 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 success or failure of the mission according to the following principles:

- 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 (Air Force Instruction 51-509, *Appointment to and Assumption of Command*).
- A commander can exercise command authority through subordinate commanders.
- Vice and deputy commanders have no command functions. However, they assist the commander via planning, investigating, and providing recommendations.
- Some command authorities may be delegated; however, the responsibilities of command may never be delegated.

The concept of command embodies two important 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.

For additional information, see *The Military Commander and the Law*.

COMMANDER, AIR FORCE FORCES LEGAL ROLES AND RESPONSIBILITIES

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The role of a commander is unlike any position found in the civilian world, and unlike almost any other found in government. A commander, Air Force forces (COMAFFOR) not only has the legal authority to perform various roles and responsibilities, but also has the corresponding legal obligation to meet requirements defined by their roles and responsibilities. Accordingly, commanders are responsible for the following:

- Mission accomplishment.
- Contracting.
- Compliance with the law, to include:
  - US law.
  - Host nation domestic law, when applicable.
  - International law.

MISSION ACCOMPLISHMENT

COMAFFOR's foremost legal responsibilities are to follow the orders of their superior joint force commander (JFC) and execute the assigned mission or task. The COMAFFOR's immediate task is to organize and, when directed, employ an effective fighting force responsive to orders in a disciplined and effective manner.

CONTRACTING

Contracting (with non-military organizations) is often required for mission accomplishment. While subordinate personnel work the processes to commission and manage contracts, the contracting officer is primarily responsible for advising the commander on contracting issues. Many contracts between the Air Force and non-military organizations are complex. In the highly regulated realm of contracting

relationships (both domestic and foreign), staff judge advocates (SJA) can provide commanders the understanding required to make important source selection and other procurement decisions. The commander's actual legal authority may not be commensurate with his or her perceived responsibility to maintain, administer, or award a contract. For accurate understanding of contractual obligations and responsibilities, commanders should frequently consult their SJAs.

COMPLIANCE WITH THE LAW

Public confidence in the military is maintained and strengthened by Airmen, particularly commanders, performing their responsibilities in a manner that is objective, fact-based, non-partisan, and non-ideological. A commander's credibility is based on objectivity in discharging his or her responsibilities. The continued viability of the commander's legal authority, particularly the authority to maintain good order and discipline, depends upon public and US government belief that commanders can be fair and objective in carrying out their responsibilities. Objectivity includes the perception of independence: maintaining impartiality, having intellectual honesty, and remaining free of conflicts of interest, and to the extent practical, free of perceived conflicts of interest. Maintaining objectivity includes a continual assessment of relationships, particularly with private entities, in the context of a commander's responsibility to the public.

UNITED STATES LAW

Every Airman makes a solemn promise to support and defend the Constitution of the United States. Commanders bear the burden of ensuring Air Force personnel comply with US law. It is their responsibility to ensure good order and discipline. George Washington once stated, "Discipline is the soul of an army." The SJA supports the commander in administering good order and discipline. Effective command and control of a force can only be exercised if the force maintains good order and discipline.

In many cases, within the US, the Air Force is not directly bound by State or local laws because the Air Force is a federal entity.

HOST-NATION DOMESTIC LAW

Outside the US, Air Force activities may not be bound by host nation law due to basing agreements or status of forces agreements with a host nation or as part of an alliance (e.g., the North Atlantic Treaty Organization).

It is important for the commander and local authorities to fully understand the extent to which host-nation laws apply to the Air Force and its personnel. A further challenge is ensuring individual Airmen understand and comply with host-nation or state law, where applicable. In many cases, the Air Force, as an entity, has been exempt from certain host-nation legal requirements that still apply to Airmen acting in their personal capacity. Here, the commander has a critical role to ensure local authorities are respected to the maximum extent possible, while maintaining fair treatment of Airmen. SJAs will provide

advice on local and host-nation law. For additional information, see Air Force Instruction (AFI) 51-402, *International Law*.

INTERNATIONAL LAW

International law is comprised of both treaty and customary law. With the emergence of a credible peer / near-peer opponent, international law is becoming increasingly important in the context of military operations. Some aspects of international law are well known to the commander, such as the law of war. Others may not be. All Air Force judge advocates are trained in the basic foundations and principles of international law. The SJA may also have judge advocates on staff that specialize in this area and can provide advice and support to the commander on applicable international law issues. For additional information, see AFI 51-402, *International Law*.

For additional information, see *The Military Commander and the Law*.

AIR FORCE JUDGE ADVOCATE GENERAL CORPS ORGANIZATION

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THE JUDGE ADVOCATE GENERAL

Under federal law, The Judge Advocate General (TJAG) is the legal advisor to the Secretary of the Air Force (SECAF), the Chief of Staff of the Air Force (CSAF), and all officers and agencies of the Department of the Air Force. TJAG directs Air Force judge advocates and paralegals in the performance of their duties.

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

- The ability of TJAG to give independent legal advice to the SECAF or CSAF.
- The ability of judge advocates assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.

In addition, the staff judge advocate (SJA) or legal officer of any command is entitled to communicate directly with the SJA or legal officer of a superior or subordinate command, or with TJAG.

The Air Force Judge Advocate General's Corps (AFJAGC) organization includes the following personnel:

- TJAG and Deputy Judge Advocate General (DJAG).
- All other Air Force officers designated as judge advocates.
- Paralegals and those assigned duties in legal offices at any level of command.
- Civilian attorneys and legal services civilians supporting the AFJAGC mission.
- Air Force Reserve Component officers designated as judge advocates.

- Air Force Reserve Component enlisted personnel in the paralegal services career field and those assigned duties in legal offices at any level of command.

Commanders should note that, despite any temporary duties a judge advocate may be given, they retain their status as an AFJAGC member.

AIR FORCE LEGAL OPERATIONS AGENCY

The Air Force Legal Operations Agency (AFLOA) is a field-operating agency comprised of more than 800 military and civilian attorneys, paralegals, and support personnel worldwide. AFLOA provides the Air Force with civil, commercial, and criminal law expertise and litigation support, as well as legal education and cutting-edge technological assets. The divisions of AFLOA, including the JAG School and the AFJAGC field support centers (FSCs), provide direct legal services and support throughout the Air Force. The AFLOA Commander ensures that FSCs regularly communicate with staff judge advocates (SJAs) to maintain effective lines of communication and support to field commanders.

Field Support Centers

FSCs are TJAG's primary vehicle for providing legal reachback support to field commanders through their SJA. FSCs provide added expertise concerning a particular legal issue by coordinating with, and acting through, a commander's SJA. 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 FSC provides. If warranted, an SJA may seek FSC expertise in areas such as aircraft investigations, claims, government contracts, environmental, or labor issues.

STAFF JUDGE ADVOCATE

The SJA is the senior judge advocate assigned to provide legal advice to a court-martial convening authority (the Air 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 staffs.

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. By law, SJAs are authorized to communicate directly with the SJA of a superior or subordinate command or with TJAG. No officer or employee of the DOD may interfere with the ability of judge advocates to give independent legal advice.

STAFF JUDGE ADVOCATE TO THE COMMANDER, AIR FORCE FORCES ORGANIZATION

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The commander, Air Force forces (COMAFFOR) has several staff activities that fulfill specific responsibilities. These activities 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. The COMAFFOR's staff judge advocate (SJA) provides the full spectrum of legal services and advice to the COMAFFOR and Air Force forces (AFFOR) staff.

THE AFFOR STAFF JUDGE ADVOCATE

Judge advocates 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 judge advocates and paralegals, the COMAFFOR establishes and maintains good order and discipline for all members assigned or attached to an air expeditionary task force (AETF). The AFFOR SJA provides guidance and managerial oversight to all subordinate judge advocates and paralegals.

Therefore, with the exception of the component major command and component numbered Air Force, AFFOR Air Force Judge Advocate General Corps personnel should not be dual-hatted as legal advisors to the joint force air component commander and air operations center, if feasible.

SJA duties to the COMAFFOR include the responsibilities to:

- Assess the impact of US laws, host-nation laws, and international agreements on the actions and planning of US and coalition forces (e.g., overflight issues, beddown, host-nation 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., status of civilians, contractors, detainees, and asylum seekers).

- Provide assessment and guidance on command relationships.

- Assess the impact of fiscal and contracting authorities on operations.

- Advise the commander on how to effectively maintain good order and discipline.

- 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., recompense, 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, 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.

Organization and Manpower

Manning is based upon the expectation of full-time support and advice to the COMAFFOR, AFFOR staff, and subordinate legal offices. The organization of the COMAFFOR's legal staff varies based on the scope of the operation and the number of subordinate forces. The COMAFFOR's SJA determines the best way to organize subordinate judge advocates and paralegals. A common practice is to organize by subject matter areas (e.g., military justice, international law, fiscal law, civil law, and claims). The SJA is responsible for identifying AFJAGC personnel manning requirements for subordinate AFFOR units.

COMAFFOR AFJAGC personnel manning should be tailored appropriate to the operation while minimizing the forward footprint. Reachback and distributed staff capabilities should be considered when determining manning requirements.

Primary Functions and Capabilities

Judge advocates and paralegals also contribute their expertise to air component planners in areas of domestic, foreign, and international law that directly affect the conduct of air, space, and cyberspace operations. To meet this challenge, judge advocates and paralegals should also have the relevant knowledge, experience, access, and training to function within a joint or multinational environment.

INTEGRATION OF LEGAL SUPPORT IN THE AIR OPERATIONS CENTER

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Judge advocates and paralegals are usually integrated into the various divisions and cells within an air operations center (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 rules of engagement cells. As a specialty team, judge advocates and paralegals are not directly assigned or dedicated to support a particular division, but are available to support demands from the entire organization.

The commander, Air Force forces (COMAFFOR) should ensure their judge advocates and paralegals are made part of the joint legal staff and the level of legal support meets the COMAFFOR's requirements when performing duties as the joint force air component commander (JFACC) as well as 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 normally determine judge advocate and paralegal resources given to the AOC.

Legal support in an AOC is provided by judge advocates and paralegals with training and security clearances commensurate with their duties. Paralegals assist judge advocates in identifying legal issues and supporting functions and processes within an AOC, but **only judge advocates may provide legal advice or render a legal opinion**.

STRATEGY DIVISION

Judge advocates and paralegals assist the strategy division by evaluating legal issues raised by the operational environment and the objectives of the supported commander. Within the strategy division, judge advocates and paralegals concentrate on long-range planning to support the development, refinement, dissemination, and assessment of the JFACC's plans and operations in support of the joint force commander's (JFC's) strategy and the joint air operations plan (JAOP). Judge Advocates and paralegals give tailored legal services to support the planning requirements of the strategy division.

As the JAOP is developed and objectives are identified, judge advocates and paralegals review mission objectives found in the strategy and identify legal constraints that may restrict or prevent certain courses of action. Judge advocates assess the intent of the

commander, analyze the proposed course of action in light of the limitations and constraints found in law, policy, the rules of engagement (ROE) or other guidance, and advise the commander on the lawfulness of each course of action. **The primary role of the judge advocate is to ensure the proposed strategy, including branches and sequels, is consistent with the law, policy, and orders from commanders that govern the operation and to address any legal constraints that may affect joint or coalition forces.**

COMBAT PLANS DIVISION

Judge advocates and paralegals provide commanders assistance in developing legally acceptable plans and orders that support the JAOP and the guidance issued by the JFC. Within the combat plans division, judge advocates facilitate the conversion of strategic guidance into executable plans and orders.

Judge advocates 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 engaged with available resources. In this capacity, judge advocates advise personnel who produce the following: targeting effects, master air attack plan (MAAP), air tasking order (ATO), and airspace control order (ACO). Judge advocates and paralegals participate in target list development, production of the MAAP, drafting special instructions, and publishing the ACO and the final daily ATO.

Judge advocates review proposed tactics, targets engaged, and weapons employed for compliance with international law, domestic law, ROE, and applicable national policy. Judge advocates focus on ensuring tactics, target engagement, and weapons employment are consistent with the law of war and ROE. For example, a judge advocate may serve on a joint targeting coordination board or advise a commander on the requirements to protect cultural property and to minimize collateral damage during an air strike. **Although the ultimate decision whether to strike a target rests with the commander, judge advocates review proposed targets and identify legal considerations.**

COMBAT OPERATIONS DIVISION

Within the combat operations division, judge advocates and paralegals concentrate on evaluating the legality of employment options designed to support the overall assigned objectives. Accordingly, judge advocates provide legal advice concerning personnel recovery operations and attacks on dynamic targets. For example, when attacking dynamic targets, a judge advocate considers factors affecting positive identification of the target including the sufficiency and accuracy of target data, the requirements of the law of war, compliance with the ROE, and safeguards against a friendly fire incident. Additionally, judge advocates play a significant role in ensuring that the appropriate approval for the strike has been obtained from the targeting engagement authority and higher-level authority, as required.

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

Judge advocates and paralegals should maintain situational awareness to identify legal issues resulting from the execution of planned or time-sensitive operations. Judge advocates monitor and evaluate tactics, technology, capabilities, or other conditions to identify legal issues that may impact an operation. They recommend commanders modify, or forward a request to modify, ROE when conditions or circumstances warrant changes to those rules. Judge advocates and paralegals advise on the changing nature of operations during execution with the goal of ensuring the legal integrity of military operations. Judge advocates and paralegals properly integrated within the combat operations division are in the best position to understand and identify legal issues that may affect an operation. Judge advocates remain available to provide immediate legal advice on targets of opportunity and other dynamic operational requirements.

Because of the urgent nature of dynamic targeting, judge advocates should provide critical legal advice immediately. Judge advocates and paralegals need to be forward-thinking, anticipating potential legal issues for time-sensitive targets. Commanders should seek legal advice if conditions change during air operations. Judge advocates assess targets and form sound legal opinions based on national and other policy, ROE, and the law of war to support the commander's objectives.

If a possible law of war violation or friendly fire incident is discovered, reported, or reasonably suspected, commanders should immediately involve their judge advocates and paralegals. When a possible law of war violation is identified, judge advocates and paralegals review all available information to assist the commander in determining if the information is credible, thus is a reportable incident. If a formal investigation is requested by higher authority, advise and assist the cognizant military criminal investigative organization. When a possible friendly fire incident occurs, judge advocates and paralegals review all available information; and if commander directed, judge advocates and paralegals help initiate or assist in investigations. Upon receipt of an initial report of any suspected law of war violation or friendly fire incident, judge advocates and paralegals advise the operational chain of command on measures to ensure preservation of evidence and information to support future investigations or inquiries.

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, judge advocates may advise the air mobility control team on interpretations of international agreements, risk to ground objects from airdrops, overflight rights, and landing rights.

AIR FORCE JUDGE ADVOCATE GENERAL CORPS SUPPORT TO AIR FORCE OPERATIONS

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AIR FORCE JUDGE ADVOCATE GENERAL CORPS (AFJAGC) SUPPORT

Air Force judge advocates support all Air Force operations in support of the commander, Air Force forces (COMAFFOR) and the COMAFFOR's role as joint force air component commander.

Air Warfare

Virtually all aspects of air warfare have legal considerations. Attacks may be restricted by political considerations, military risk, as well as by international law, the law of war, and rules of engagement (ROE). Counterair, strategic attack, counterland, countersea, counterspace, and personnel recovery operations are all affected by international and host-nation 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, as well as US obligations under international arms control treaties. AFJAGC personnel have a vital role in training personnel and advising commanders on the legal aspects of targeting. The staff judge advocate (SJA) to the COMAFFOR provides a dedicated legal staff to this practice. For additional information, see Annex 3-01, *Counterair Operations*; Annex 3-70, *Strategic Attack*; Annex 3-03, *Counterland Operations*; Annex 3-04, *Countersea Operations*; Annex 3-14, *Counterspace* Operations, Annex 3-50, *Personnel Recovery*; and Annex 3-40, *Counter-Weapons of Mass Destruction Operations*.

Operations in an Irregular Warfare (IW) Environment

IW is characterized as "a violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s)."[1] IW favors indirect and asymmetric approaches, though it may employ the full range of military and other

[1] Joint Publication 1, *Doctrine for the Armed Forces of the United States.*

capacities, in order to erode an adversary's power, influence, and will. The ROE for activities conducted in an IW environment are often constrained, due to the political and social sensitivities involved when the population, not the military, is the center of gravity. In irregular operations, contingencies can develop rapidly and in non-traditional locations; therefore, long-standing status of forces agreements (SOFAs) frequently do not exist. Legal constraints on the use of US funds, equipment, and supplies in support of non-US personnel may be complicated. Other legal challenges may include contingency contracting, the use of non-standard materiel, and the employment of local labor.

The COMAFFOR's A-staff (AFFOR) SJA plays a critical role in the planning and execution of indirect-support IW activities by ensuring that proper legal authorities and funding are available and identified for all security cooperation assistance, both materiel and non-materiel, 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 in close proximity to civilians may present law of war and ROE challenges. Commanders should be aware of the potential for rapidly changing ROE, the potential need to request modifications to the ROE for mission accomplishment, and the need to inform subordinates as changes occur. Understanding commander's intent and ROE can reduce the chances of tactical errors that can result in strategic setbacks. See Annex 3-2, *Irregular Warfare*, for additional information.

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 important to ascertain whether a proposed activity or operation falls within the assigned mission of an Air Force 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. See "Authorities and Legal / Law Enforcement Considerations and Constraints" in Annex 3-12, *Cyberspace Operations*, and Joint Publication 3-12, *Cyberspace Operations*, legal considerations for additional information.

Air Mobility Operations

Since air mobility operations cover the globe, a broad range of legal issues arise during normal operations. Support from host nations involved in any air mobility operation is essential. Host-nation support is needed to ensure the availability of fuel for air mobility aircraft. It is paramount to obtain diplomatic clearances from a host nation for both

overflight and landing. Past conflicts have demonstrated the ability, or lack thereof, to obtain diplomatic clearances has far-reaching impacts on air mobility efforts. Failure to adequately ascertain host-nation support and provide for any required augmentation can result in mission failure.

Judge advocates determine whether a SOFA or other agreements regarding US military presence in the host nation are in effect. If no SOFA or other agreement exists, and legal analysis of the situation or operation proves an agreement is necessary, proceed in accordance with Department of Defense (DOD) Directive 5530.3, *International Agreements*, and Air Force Instruction 51-403 *International Agreements*. SOFAs normally include 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 essential to maintaining the sovereignty of US military aircraft. Additionally, if agreements are not understood or adhered to by personnel, mission failure is possible. See Annex 3-17, *Air Mobility Operations* for additional information.

Space Operations

The AFJAGC maintains a cadre of judge advocates specially trained in air and space law who understand the treaty, policy, and legal considerations associated with space operations. See Annex 3-14, *Counterspace Operations*, for additional information.

Special Operations

Planning and execution of special operations may raise legal issues, including 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. Air Force special operations forces commanders should ensure qualified legal support is integrated into mission planning, ROE development and publication, aircrew and operator training, and actual mission execution. See Annex 3-05, *Special Operations*, for additional information.

Defense Support to Civilian Authorities

There are Constitutional, statutory, and regulatory considerations to legal support regarding homeland operations and the law, including financial reimbursement to DOD.

Any use of DOD assets to collect intelligence on US persons must be in accordance with the Fourth Amendment to the US Constitution and DOD Manual 5240.01, *Procedures Governing the Conduct of DOD Intelligence Activities*. The *Posse Comitatus Act* (Title 18, United States Code [USC] §1385) and DOD Instruction 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, prohibits using members of the Army, Air Force, Navy, and Marine Corps to execute laws in the civilian community, except when authorized by the Constitution or by act of Congress. Congress has passed

numerous exceptions to the prohibition. Some examples include the President's ability to invoke the *Enforcement of the Laws to Restore Public Order Act* (formerly the *Insurrection Act*), and legislation permitting some use of the military in direct law enforcement roles to counter the influx of illegal narcotics.

The 10th Amendment to the US Constitution reserves to the States the power to protect their people. When managing the consequences of an event, States normally exercise primacy over domestic incidents. Only when States request federal assistance (or in extraordinary circumstances) does the federal government normally get involved. The request process is a key step for DOD because a formal request by the state followed by Presidential approval is necessary for a military Service to receive financial reimbursement.[2]

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

Information Operations (IO)

There are basic legal considerations that should be taken into account during all aspects of IO planning and execution. judge advocates at all levels of command advise on IO. See "Policy and Legal Considerations for Information Operations" in Annex 3-13, *Information Operations*, for additional information.

Intelligence, Surveillance, and Reconnaissance (ISR)

There are numerous legal issues associated with ISR, especially if intelligence collection includes information related to US persons. Coordinate ISR activities with judge advocates to ensure compliance with the law and any existing ROE. Manned and unmanned aircraft may be subject to host-nation overflight and access restrictions in an area of responsibility. DOD practice and procedures for obtaining foreign clearance for US military aircraft is outlined in the *DOD Foreign Clearance Guide*. See Annex 2-0, *Global Integrated Intelligence, Surveillance, and Reconnaissance Operations*, for additional information.

Rescue Operations

Judge advocates provide legal advice to commanders on all aspects of air and ground rescue operations inside and outside the Air Force. Rescue operations consist of a number of specific tasks performed by Air Force units 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 successfully

[2] More information can be found in the *Stafford Act* (42 USC §§ 5121 et seq.).

perform rescue operations, judge advocates familiar with these operations are readily available to advise commanders and to be involved throughout the process – from the beginning of rescue planning activities to the reintegration of recovered personnel. For additional information, see Annex 3-50, *Personnel Recovery*.

Combat Support

Judge advocates provide legal advice to commanders 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 judge advocate provides services that maximize the legal readiness of the force on both organizational and personal levels. For additional information, see Annex 4-0, *Combat Support*.

Distributed Operations

Due to technological advances, today's Airmen are capable of conducting long range strikes, operating remotely piloted vehicles, or conducting cyberspace operations, creating battlespace effects from locations far removed from an area of hostilities. Air Force units located in the US participating in overseas hostilities may raise difficult command issues concerning the appropriate role of Air Force civilians and contractors in distributed operations. While such issues are largely policy matters, judge advocates must ensure commanders understand the law of war implications of their decisions. The geographically closest legal office to an Air Force unit engaged in a distributed operation may not be the COMAFFOR's legal office. Despite the geographic proximity of another Air Force legal office, the legal support to the operational Air Force unit is still provided by the unit's operational chain and the COMAFFOR's legal office. While the COMAFFOR legal office may permit a host base legal office to provide certain types of administrative legal support to a tenant Air Force unit engaged in distributed operations, all operationally relevant legal guidance will still come from the COMAFFOR's legal office.

ROLE OF AIR FORCE JUDGE ADVOCATE GENERAL CORPS IN OPERATIONS PLANNING

Last Updated: 24 January 2020

Judge advocates assist planners in the application of legal considerations and by recommending legally acceptable courses of action to the commander.

Commanders should seek legal advice during each phase of the joint planning process to ensure legal considerations are addressed (see Appendix B). Judge advocates have the following responsibilities during this process:

- Ensure plans comply with relevant multilateral and bilateral international agreements, international law and domestic law, US government policy, and Department of Defense guidance.
- Prepare the appropriate appendices and annexes to plans.
- Review the entire plan with a focus on areas with legal significance (e.g., legal authorities, targeting, fiscal considerations, host-nation support agreements, air navigation, use of force, and status of forces).
- Review relevant supporting plans to ensure appropriate appendices and legal annexes are complete and provide the necessary guidance.
- Ensure the appropriate amount and type of judge advocates and paralegals have been identified to deploy in support of operations, or to support operations in-place.

Judge advocates and paralegals should be thoroughly familiar with the plans they are tasked to support, the unique legal issues for the supported operational area, and the capabilities of the employment locations they may be tasked to support. The mission of each employment location will uniquely impact legal readiness requirements. Therefore, mission success requires advanced preparation by judge advocates and paralegals. See Appendix C for additional details about the legal support role in joint planning.

The responsibilities of judge advocates and paralegals during crisis situations are similar to those during joint planning; however, the time available for legal support planning is compressed. Judge advocates and paralegals should be familiar with the joint planning process and be able to address legal considerations in each phase of the process as outlined in Appendix C.

For additional information on legal support to joint planning, see Joint Publication 3-84, *Legal Support*.

ROLE OF AIR FORCE JUDGE ADVOCATE GENERAL CORPS IN RULES OF ENGAGEMENT AND RULES FOR THE USE OF FORCE DEVELOPMENT

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Rules of engagement (ROE) are rules that govern the use of force to reflect the will of the civilian and military leadership. ROE are defined as "directives issued by competent military authority that delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered."[3] ROE constrain the actions of forces to ensure their actions are consistent with domestic and international law, national policy, and objectives. ROE are based upon domestic and international law, history, strategy, political concerns, and a vast wealth of operational wisdom, experience, and knowledge provided by military commanders and operators.

Rules for the use of force (RUF) apply when Department of Defense (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.

Appendix F offers considerations to assist the commander with ROE development.

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 serve political, military, and legal purposes and define the parameters within which Air Force personnel accomplish their missions. They ensure national policy and objectives are reflected in the actions of Air Force forces and set constraints on a commander's actions so they are consistent with domestic and international law and national policy. ROE help ensure the appropriate military capability is applied prudently and often reflect collateral limitations that restrict the use of force far beyond what is required by the law of war. History has demonstrated

[3] Joint Publication 3-84, *Legal Support*

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

ROE ensure that Air Force forces comply with the law of war. Air Force forces adhere to the law of war and embrace the principles set forth therein, including the principles of military necessity, humanity, proportionality, and discrimination. 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.

PRINCIPLES

Absent specific operational necessity, ROE and RUF should never impede the inherent right of self-defense of US forces. ROE and RUF for US forces should not limit a commander's inherent authority and obligation to use all necessary means available to take action 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 United States, US forces, or other designated persons or property. Commanders at every echelon are responsible for establishing or requesting ROE for mission accomplishment that comply with ROE of senior commanders and the US Standing ROE.

By following the ROE and RUF principles outlined below, Air Force forces' missions are less likely to be compromised and US political and military objectives are more likely 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.**

CHARACTERISTICS

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

- Be transparent and clearly linked to mission accomplishment.
- Be continually briefed to all Airmen by commanders, warfighters, and judge advocates.
- 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.

AFJAGC STAFF ROLE IN ROE AND RUF DEVELOPMENT

Judge advocates serve as the principal advisor to the commander, Air Force forces and staff, as well as to the joint force air component commander (when the COMAFFOR is so appointed) for ROE and RUF. A judge advocate assists in the development of ROE and RUF, but the operators (planning and executing in the operational chain of command) have the responsibility to formulate and submit ROE and RUF for approval.

Modifying ROE and RUF

Judge advocates and paralegals assist commanders in modifying or requesting changes to the ROE and RUF. With few exceptions, ROE are fundamentally permissive in nature and allow commanders to modify or request changes to them to support mission accomplishment. Unlike the permissive nature of ROE, special weapons and tactics not authorized within RUF are not approved. 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 for self-defense. Judge advocates and paralegals assist commanders in determining appropriate ROE and RUF and recommend changes when necessary. Commanders should seek 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

Air Force commanders expect judge advocates to know and fully advise Air Force forces on ROE and RUF.

LEGAL REVIEW OF COMMAND AND CONTROL ISSUES

Last Updated: 24 January 2020

Command and control (C2) is not only a doctrinal construct, but is also based on legal requirements and authorities. Command is the lawful authority of the commander derived from the Constitution and statutes enacted by Congress. Control is the regulation of forces and functions to accomplish the mission in accordance with the commander's intent (including Presidential and Secretary of Defense [SecDef] intent). Combatant commanders (CCDRs) are tasked by law to employ forces. In contrast, Service chiefs are tasked to organize, train, and equip US military forces. As these differing responsibilities require different command relationships and levels of authority, the need to understand legal requirements and authorities becomes increasingly important.

Because command authorities can be expressly created by statute, some agencies have unique command arrangements involving "dual-purpose" forces. "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*, United States Code (USC). The greatest benefit of "dual-purpose" forces is their authority to operate under Title 50 laws while at the same time being employed by CCDRs under their Title 10 authority. Legal consultation facilitates operations within dual statutory constructs. See Appendix G for an explanation of the USC.

AIR RESERVE COMPONENT (ARC) CONSIDERATIONS

Special considerations exist in determining the command relationships when dealing with a state's Air National Guard (ANG) in Title 32, *National Guard*, status, versus the Air National Guard of the United States when federalized under Title 10. The commander exercises command over applicable ANG units and members when they are federalized under Title 10. The CCDR, through the commander, Air Force forces (COMAFFOR), exercises operational control (OPCON) of applicable ANG units and members when they are federalized under Title 10. Administrative control (ADCON) for these federalized units is shared by the ANG Readiness Center and the COMAFFOR. Under less than full mobilization, the gaining commander may exercise specified elements of ADCON over these federalized units in coordination with the ANG Readiness Center. If full mobilization has occurred, ADCON is given to the gaining commander.

ANG units operating outside of the US must be in Title 10 status. ANG units performing federal missions, absent specific authorization by the President or SecDef, are usually in Title 10 status. When ANG personnel are involved in training for a federal mission (Title 32 status), the operational commander may exercise training and readiness oversight, but does not possess command authority. In this case, command authority remains with the state authorities.

Title 32 status ANG members fall under the command authority of the adjutant general (TAG) of their state, and therefore their governor. If ANG members operate in Title 32 status outside of their state, but within the US, command authority remains with the TAG, but is subject to any coordinating authority or state-to-state agreements. If no pre-negotiated agreement exists, responsibilities such as support and force protection are normally coordinated between applicable commanders.

Similar considerations apply when dealing with the Air Force Reserve (AFR) forces. AFR forces train and operate in a federal status under Title 10. As a part-time force, the AFR are similar to ANG forces, in that they are not continually in active duty status. AFR are subject to the *Uniform Code of Military Justice* (UCMJ) when on active duty and while on inactive-duty training. Unless serving in a Title 10 status, ANG members are not subject to the UCMJ and military justice or other disciplinary actions must be taken in accordance with the individual states' military disciplinary codes.

The ARC forces (which by statute include the ANG and the AFR) must be called to active duty as volunteers or involuntarily under specific statutory authority. When AFR forces are involved in training, and not actually engaged in CCDR operations, the operational commander normally exercises training and readiness oversight.[4] All ARC forces are only called to duty for specific periods of time. Care should be taken that their military status is lawfully maintained if it becomes necessary to extend their term of service.

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[4] More information about ARC use can be found in the current Global Force Management Implementation Guidance. See *Appendix E, Global Force Management* in Joint Publication 5-0, *Joint Planning*.

Appendix A: LEGAL SUBJECT MATTER FOR AIR FORCE OPERATIONS

Last Updated: 24 January 2020

Judge advocates provide decision-makers at all levels with the analysis needed to evaluate options, assess risks, and make decisions compliant with the law. During any deployment, Airmen usually face legal issues comparable to those from previous operations. While not exhaustive, the list of topics below (primarily derived from Joint Publication 3-84, *Legal Support*) highlights the types of legal issues addressed by Air Force Judge Advocate Corps (AFJAGC) personnel in the past:

- Administrative law, including investigations.
- Air and space law.
- Business, commercial, and financial law.
- Claims.
- Contract law.
- Criminal law.
- Domestic operations law.
- Environmental law.
- Ethics and standards of conduct.
- Fiscal law.
- Intellectual property law.
- Intelligence law.
- International, comparative, and foreign law.

- Law of the Sea.
- Law of war.
- Labor and civilian personnel law.
- Legal assistance.
- Rule of law / legal training.
- Litigation.
- Medical law.
- Military justice.
- Military personnel law, including adverse actions.
- Operational law.
- Real property law.
- Regulatory law.
- Tax law.
- Transportation law.
- Telecommunications law.
- Cyber law.
- Laws and status of the International Committee of the Red Cross.

For details regarding specific functional legal issues, see *Air Force Operations and the Law*.

Appendix B: LEGAL CONSIDERATIONS IN AIR FORCE OPERATIONS

Last Updated: 24 January 2020

LEGAL BASIS FOR MISSION

Upon deployment, commanders and judge advocates 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 and 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 (e.g., authorization for the use of military force)? If no congressional authorization, is there a basis under the President's Article II authorities?
- What is the international legal basis for the mission (e.g., UN Security Council Resolution under UN Charter, Chapter VII, self-defense, other treaty obligation)?
- Is this a United Nations (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 of a US commander?

STATUS OF FORCES

Upon deployment, commanders and judge advocates 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 forces 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) or joint force air component commander (JFACC, when the COMAFFOR is so appointed) 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 and landing fees, taxes, duties, entrance requirements?

USE OF FORCE

When deploying, judge advocates 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 or neutralize any given target? Who is the release authority for each weapon or weapon system?

- Who does a COMAFFOR or JFACC contact to request modification of the ROE or RUF, and how?

- Have personnel received law of war 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 Department of Defense Instruction 5515.08, *Assignment of Claims Responsibility*?
- 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, tear-gas or riot control agents, counter-small unmanned aircraft systems, electromagnetic warfare)?

- 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? For 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 to support operations in the different operating environments: the United States; in a host nation; 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)?

APPENDIX C: PLANNING AND EXECUTION RESPONSIBILITIES

Last Updated: 24 January 2020

Joint Planning Process for Air (Planning) Duties and Responsibilities.

COMAFFOR/JFACC	Role of Legal Counsel
Step I: Initiation	
Assign planning tasks. - COMAFFOR support planning tasks - JFACC employment planning tasks Set initial planning timeline Issue planning guidance. - COMAFFOR support planning guidance - JFACC employment planning guidance	Review JFC tasking and planning documents Review applicable laws, policies, treaties, and agreements.
Step II: Mission Analysis	
Review JFC 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	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 all planning documents. Assist the COMAFFOR/JFACC by advising on legal issues relating to known facts, current status, and/or conditions. Determine own specified, implied, and essential tasks.

	Assist the COMAFFOR/JFACC by identifying legal issues that may impose operational limitations. Provide guidance as to legal issues that have the potential to impact own military end state, objectives, and initial effects, as well as those that may impact CCIRs. Research applicable domestic, international, and foreign laws, policies, treaties, and agreements. Summarize relevant legal considerations (authorities, restraints, and constraints) and provide them to the planning group. Consider assigned mission, current situation, next higher commander's intent, UN Security Council resolutions, standing ROE/RUF, approved supplemental ROE, multinational, and fiscal constraints.
Step III: COA Development	
Provide COA development guidance Review staff estimates and enemy COAs Develop Operational Objectives, Tactical Objectives and Tasks Develop friendly air COAs including narratives and graphics	Assist the COMAFFOR/JFACC and staff in evaluating each COA to ensure it is acceptable at both the operational and tactical level (i.e., worth the risks and within legal parameters). Consider all of the domains (air, land, maritime, and space), and the information environment, to include cyberspace and all of the joint functions (movement and maneuver, intelligence, fires, sustainment, protection, and command and control). List the ROE/RUF and supplemental measures required to support each COA and test each COA to ensure it is acceptable (i.e., within use of force limitations).

	Consider input from counterparts at higher, lower, and adjacent headquarters. Reconcile legal objections by seeking clarification or modification of each COA or requesting authorizations, exceptions, or waivers to support each COA.
Step IV: COA Analysis and Wargaming	
Coordinate wargame method Coordinate evaluation criteria Conduct the wargame Refine COAs Determine Branch/Sequel requirements Determine Strengths and Weaknesses of COAs Determine decision points and CCIRs	Continue to refine legal considerations. Wargame legal consequences of actions, reactions, and counteractions. Review legal authorities throughout wargaming. Determine whether friendly actions or counteractions require approval by higher authority.
Step V: COA Comparison	
Coordinate Comparison Method Evaluate Decision Matrix Determine preferred COA	Evaluate COAs in light of established criteria. Provide additional comparison criteria.
Step VI: COA Approval	
Conduct COA Decision Briefing Select a COA Get JFC approval on selected COA	Brief the legal considerations and assist other staff sections in briefing legal issues related to their planning (e.g., ROE, detainees). Determine legal support requirements.
Step VII: Plan or Order Development	
Refine selected concept of operations Develop Joint Air Operations Plan with appropriate annexes (JFACC)	Prepare the legal considerations paragraph of the JAOP according to CJCSM 3130.03.

Develop Air Force support plan with appropriate annexes (COMAFFOR)	Prepare the legal annex according to CJCSM 3130.03. Assist the J-3/J-5 in preparing the ROE/RUF annex. Assist the J-3/J-5 in preparing supplemental ROE/RUF request and authorization messages according to the format in CJCSI 3121.01B. Monitor dissemination, training, and interpretation of ROE/RUF and of guidance for detention operations. Review training tools used at lower echelons. Review and crosswalk the JFC's operation orders and any ROE/RUF authorization messages to ensure they are legally correct, complete, and consistent. Recommend fragmentary order(s) and changes to the ROE/RUF to correct any errors or omissions.

Joint Air Tasking Cycle (Execution) Duties and Responsibilities.

COMAFFOR/JFACC	Role of Legal Counsel
Stage 1: Objectives, Effects and Guidance	
Review JFC guidance, JAOP, JFACC guidance, enemy situation Develop Air Apportionment Recommendation and get approval from JFC Produce Air Operations Directive (AOD) that describes the air strategy for the ATO period	Review JFC, JAOP, and JFACC guidance and AOD for legal sufficiency and compliance with applicable rules and requirements.

Stage 2: Target Development	
Prioritize targets based on effects trying to create for the JFC Product of the step is the joint integrated prioritized target list	Participate in target development and approval meetings. Monitor target development for compliance with CJCSI 3370.01C. Review targets for legal sufficiency and compliance with the law of war, applicable ROE/RUF, and other controlling guidance.
Stage 3: Weaponeering and Allocation	
Targets are weaponeered, to include recommended aimpoints, weapon systems and munitions Evaluate collateral damage concerns Develop master air attack plan (MAAP) (matches resources to targets) Conduct MAAP briefing	Monitor collateral damage estimation process for compliance with CJCSI 3160.01C. Review target packages and advise on collateral damage concerns. Attend MAAP briefing and brief, or assist staff with briefing, legal considerations. Review deliberate targets placed on the ATO for legal sufficiency,
Stage 4: ATO Production and Dissemination	
Construct, publish and disseminate the ATO and Special Instructions (SPINs) Finalize airspace control order (ACO)	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	
Direct execution of air capabilities Respond to required changes Respond to moving targets or changing priorities	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	
Evaluate the results of joint air operations Determine impacts on future operations	Advise on legal concerns. Determine legal impacts on future operations resulting from the evaluation of the results of joint air

APPENDIX D: LEGAL READINESS CONSIDERATIONS

Last Updated: 24 January 2020

READYING THE FORCE

While not an exhaustive list, judge advocates and paralegals may take any or all of the following actions to support readying the force:

- Advise commanders of forces preparing for deployment.
- Develop and implement robust preventive law programs.
- Participate in the logistics support process to obtain, pre-position, or transfer resources to sustain operations.
- Provide training and mission-related legal assistance on the legal issues influencing readiness (e.g., estate planning, law of war, rules of engagement [ROE]).
- Prepare legal support capabilities for deployment.

PREPARING THE OPERATIONAL ENVIRONMENT

Following are examples of the actions judge advocates and paralegals may take to support preparing the operational environment:

- Identify and resolve legal issues within the operational environment (e.g., host-nation support, use of force, environmental constraints).
- Remove, document, or resolve legal impediments encountered during base support planning activities.
- Determine legal reachback capabilities and requirements available to support forward deployed forces and those required to sustain operations.

- ✪ Identify legal support requirements and capabilities needed to support operations (e.g., legal services, equipment, facilities).

POSITIONING THE FORCE

Judge advocates and paralegals may take any or all of the following actions to support positioning the force:

- ✪ Deploy as part of advance and reception teams or operational cadre to receive and beddown deploying forces.
- ✪ Participate in negotiations for host-nation support and the status of US forces in a host nation (e.g., foreign criminal jurisdiction, landing fees, use of facilities, claims provisions, taxes).
- ✪ Develop comparative law studies of the operational environment (e.g., civil and criminal procedures, summary of unique host-nation laws, rights of US personnel apprehended by host-nation authorities).
- ✪ Support logistics processes to obtain goods and services from the local economy (e.g., contingency contracting actions, environmental law, and land use issues).
- ✪ Assist commanders and their staffs in developing local policies and procedures to protect the force and maintain discipline (e.g., General Order #1; force protection plan).
- ✪ Educate deploying forces on legal issues and policies that apply to the location and operations conducted from the location (e.g., host-nation law, ROE, claims provisions).
- ✪ Liaison with applicable US agencies and nongovernmental organizations within the host-nation.

EMPLOYING THE FORCE

Following are some examples of actions judge advocates and paralegals may take to support employing the force:

- ✪ Refine the legal support requirements for the location and establish reachback connectivity.
- ✪ Accomplish mission training for the supported population (e.g., ROE, law of war, General Order #1).
- ✪ Support actions to generate operational elements of the force (e.g., logistics support, operations planning, target reviews).

- Develop and organize legal services to support continuing operations (e.g., legal assistance, claims services, military justice support, and legal support to command and control [C2]).

SUSTAINING THE FORCE

While not an exhaustive list, judge advocates and paralegals may take any or all of the following actions to support sustaining the force:

- Provide full-spectrum legal services to Air Force forces at forward operating locations (e.g., courts-martial, legal assistance, claims, C2 support).
- Employ legal reachback capabilities to enhance legal services (e.g., connectivity to legal information services, liaison with legal specialists).
- Refine legal support requirements and adjust legal services to meet mission requirements (e.g., ROE changes, tax program, and upgraded equipment).
- Provide continuous support for the logistics processes (e.g., military construction, long-term service contracts, and new contracts).
- Support C2 activities and ongoing operations (e.g., ROE training, target reviews, ATO generation).

RECOVERING THE FORCE

Examples of actions judge advocates and paralegals may take to support recovering the force:

- Address legal issues concerning real property, materials, and real estate that are returned to the owner or host-nation (e.g., environmental impact, value of improvements to facilities).
- Provide mission-related personal legal services to recovering Air Force forces.
- 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, supplies).
- Adjudicate and settle claims for and against US forces (e.g., personal injury, property damage).
- Provide legal support to forces remaining behind to support recovery operations (e.g., legal assistance, contracting support, and logistics).

- ✪ Consider whether the limited time Air Reserve Component forces are called to duty drive any special redeployment prioritization or processing.

APPENDIX E: MISSION READINESS OF AIR FORCE JUDGE ADVOCATE GENERAL CORPS PERSONNEL

Last Updated: 24 January 2020

The mission requirements of a location determine the need for legal services. To achieve the level of Air Force Judge Advocate General Corps (AFJAGC) mission readiness needed, staff judge advocates (SJAs) should first determine what is required to: support operations controlled, supported, or executed at or from the home station; prepare expeditionary legal support capabilities that are postured within their offices; and prepare to integrate legal support personnel identified to augment their offices. Therefore, the mission readiness of any AFJAGC activity should be evaluated in terms of home station operations, expeditionary legal support, and home station augmentation.

EXPEDITIONARY LEGAL SUPPORT

Expeditionary legal support includes the services provided to support forward-deployed forces. Expeditionary legal support consists of the personnel and equipment available to satisfy 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, host-nation 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 AFJAGC 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 the essential levels of service provided by their activity and plan accordingly for potential changes (possibly caused by deployments or emergencies resulting in minimum manning or minimal resource situations). Advance planning of AFJAGC activities should alleviate possible repercussions and assure full-time mission-essential task accomplishment.

AFJAGC MISSION READINESS PREPARATION

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

- ✪ Continuing legal education through civilian, joint, and multinational sources.
- ✪ Professional education through Air Force, joint, and multinational sources.
- ✪ Military engagement activities with domestic and foreign agencies and activities.
- ✪ Comparative law studies and interactions with host-nation legal representatives.
- ✪ Joint and multinational exercises and training.
- ✪ Operations planning involvement to direct, control, and sustain Air Force operations.
- ✪ Evaluation of legal principle application to missions, weapons systems, and tactics.

APPENDIX F: RULES OF ENGAGEMENT CONSIDERATIONS

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PRIMARY RULES OF ENGAGEMENT (ROE) CONSIDERATIONS

What Do the ROE Say?

- 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?

What Purpose Do the ROE Serve?

- Provide guidance on the use of force—political, military, and legal.
- Control the transition from peace to war (or vice versa).
- Provide a mechanism to facilitate planning.
- Prevent friendly fire incident, civilian casualties, national/coalition political damage, or mission failure.

Have ROE Been Agreed Upon for Multinational Operations?

- By military commanders?
- By policy makers?

- ✪ Do the ROE of the multinational force permit the same degree of individual self-defense and unit self-defense as the US Standing Rules of Engagement (SROE)?

ROE FUNDAMENTALS

Mission Planning

- ✪ ROE are not a substitute for guidance, intent, judgment, or planning.
- ✪ ROE development is a collaborative process involving commanders, operators, judge advocates, 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 course of action (COA) development.
- ✪ COA analysis includes ROE refinement.

Advisories

- ✪ US ROE are fundamentally permissive.
- ✪ Brief current ROE at every joint task force update.
- ✪ Monitor ROE training and interpretation.
- ✪ Do not substitute ROE for planning.
- ✪ Use serial ROE messages and not appendices.
- ✪ Do not just ask for ROE—justify ROE.
- ✪ Resolve ROE disputes before the fight.
- ✪ Understand that ROE during irregular warfare are normally more restrictive than in traditional war.

ROE Game Plan

Establish a close working relationship with your judge advocate.

- ✪ Early judge advocate involvement in each of the air operations center divisions helps satisfy the legal review obligations under the law of war and avoids potential last-minute problems with air tasking order approval and mission execution.

- ✪ Judge advocates can identify and defuse potential showstoppers with host nations and overflight early in the planning process.

- ✪ Judge advocates can assist operators in getting clear, concise ROE and special instructions crafted and approved.

Establish an ROE cell to enhance mission planning and execution. A critical function is judge advocate involvement at inception to maximize planning efforts and to yield lawful ROE.

- ✪ Formulate ROE requests based on joint force commander objectives, guidance, and intent.

- ✪ Ensure adequate dissemination of:

  - ✪ ✪ Chairman of the Joint Chiefs of Staff Standing Rules of Engagement (SROE).

  - ✪ ✪ Any theater-specific ROE.

  - ✪ ✪ Mission-specific ROE (often termed "serial ROE").

  - ✪ ✪ Applicable multinational or coalition ROE.

- ✪ Determine if ROE amendments or supplements are needed.

- ✪ Institute scenario-based ROE training (judge advocates can coordinate efforts).

Determine the effect of the ROE. ROE and international law, to include the law of war, often impact targeting decisions. A good rule is to factor these restraints into the planning and targeting processes early on.

Establish combat identification procedures that are consistent with the ROE.

- ✪ Allow units and individuals to conduct actions appropriate for self-defense.

- ✪ Adjust ROE to fit warfighter needs.

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

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United States Code (USC) – Federal law is codified and compiled in USC, which is comprised of 53 different titles that generally deal with different areas of the law. An overview of different USC titles impacting Department of Defense (DOD) operations follows:

TITLE 5 – GOVERNMENT ORGANIZATION AND EMPLOYEES

- Title 5 has three parts: The Agencies Generally, Civil Service Functions and Responsibilities and Employees.
- Title 5 generally includes federal law outlining the role of government organization and its employees and includes the Freedom of Information Act.

TITLE 10 – ARMED FORCES

- Title 10 has five subtitles: General Military Law; Army; Navy and Marine Corps; Air Force; and Reserve Components.
- Title 10 generally includes federal law that impacts the DOD, the individual military departments, the Joint Chiefs of Staff, the combatant commanders, and all manner of military issues.
- When discussing regular and reserve component forces, regular component forces and Air Force Reserve 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 *Uniform Code of Military Justice* in Title 10.

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.

- When acting in a state capacity under Title 32, or on State active duty status, then state law is also applicable.

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

TITLE 50 – WAR AND NATIONAL DEFENSE

- Title 50 has 58 sections, and covers an array of activities. Of note, it covers intelligence agencies and guidelines, as well as the Servicemember's Civil Relief Act .