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FOR DOCTRINE DEVELOPMENT AND EDUCATION



[ANNEX 1-04 LEGAL SUPPORT TO OPERATIONS](#)

JAG CORPS SUPPORT TO AIR FORCE OPERATIONS

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JAG CORPS SUPPORT

Air Force [judge advocate generals](#) (JAG) support all Air Force operations. However, some Air Force operations deserve special legal attention including: [command and control](#) (C2), [air warfare](#); operations in an [irregular warfare](#) (IW) environment; [cyberspace operations](#); [air mobility operations](#); [space operations](#); [special operations](#); [homeland operations](#); [information operations](#) (IO); [intelligence, surveillance, and reconnaissance](#) (ISR); [rescue operations](#); [combat support](#); and Air Reserve considerations.

Command and Control

C2 are not only doctrinal concepts, but are also based on legal requirements and authorities. Command is the lawful authority of the commander derived from the Constitution and from 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, such as to the Air Force Intelligence, Surveillance, and Reconnaissance Agency. "Dual-purpose" forces are funded and controlled by organizations that derive authority under laws contained in Title 10 and Title 50, United States Code (U.S.C.). See Appendix E for an explanation of U.S. Code. The greatest benefit of "dual-purpose" forces is their authority to operate under laws contained in Title 50 while being employed by combatant commanders, at the same time, using their Title 10 authority. JAG consultation facilitates operations within dual statutory constructs.

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 armed conflict (LOAC), and [rules of engagement](#) (ROE). [Counterair](#), [strategic attack](#),

[counterland](#), [countersea](#), and [personnel recovery operations](#) all are affected by international and host-nation law, particularly the laws governing the sovereignty of a country's land, maritime, and air boundaries. [Counter-chemical, biological, radiological, and nuclear operations](#) raise serious implications regarding the lawful use of weapons under the LOAC, as well as US obligations under international arms control treaties. JAG corps personnel have a vital role in training personnel and advising commanders on the legal aspects of targeting. The SJA to the commander, Air Force forces (COMAFFOR) provides a dedicated legal staff to this practice. JAGs give advice to the warfighter on the legal aspects of targeting.¹

Operations in an Irregular Warfare Environment

IW is defined as “a violent struggle among state and non-state actors for legitimacy and influence over the relevant populations. IW favors indirect and asymmetric approaches, though it may employ the full range of military and other capacities, in order to erode an adversary's power, influence, and will”². 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 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.

Since US strategy is to assist partner nations in building their own security capabilities so they are better able to defend themselves, indirect IW approaches are becoming more widespread. The SJA to the AFFOR plays a critical role in the planning and execution of indirect IW activities by ensuring that the 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 support 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 LOAC and ROE challenges. Commanders should be aware of the potential of rapidly changing ROE and the need to inform subordinates as these changes occur. Understanding commander's intent and ROE can reduce the chances of tactical errors, which can result in strategic setbacks. See Annex 3-2, [Irregular Warfare](#).

Cyberspace Operations

Domestic and international legal considerations affect virtually every aspect of cyberspace operations. These may involve clarifying 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.

¹ Annex 3-0, [Operations and Planning](#)

² Joint Publication 1, [Doctrine for the Armed Forces of the United States](#)

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 LOAC. Moreover, some particularly sensitive aspects of operations in cyberspace fall within the purview of the national intelligence community or other interagency members. JAGs should seek additional legal support as necessary by exercising reachback to appropriate headquarters Air Force (HAF) legal offices. See [Authorities and Legal Considerations](#) in Annex 3-12, [Cyberspace Operations](#).

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 fuel availability 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.

JAGs help 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/operation proves necessary, proceed in accordance with DOD Directive (DODD) 5530.3, International Agreements, and Air Force Instruction (AFI) 51-701, Negotiating, Concluding, Reporting, and Maintaining International Agreements, for direction on how to proceed. SOFAs normally include status of personnel, operating rights and responsibilities, possible exemption from landing fees, duties, taxes, boarding/inspection of military aircraft, or 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](#).

Space Operations

The SJA maintains a cadre of JAGs specially trained in air and space law who understand the treaty, policy, and legal considerations associated with space operations. See [Legal Considerations](#) in Annex 3-14, [Space Operations](#).

Special Operations

Planning and execution of special operations may raise legal issues, including LOAC, 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 (SOF) 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](#).

Homeland Operations

There are general considerations to legal support regarding homeland operations and the law including financial reimbursement to the DOD.

Any use of DOD assets to collect intelligence on US persons should be in accordance with DODD 5240.1-R, Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons. The *Posse Comitatus Act* (18 U.S.C. §1385) prohibits using members of the Army and Air Force 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 exceptions, together with the President's inherent authority under the Constitution, lead to the conclusion that Posse Comitatus does not constitute an insurmountable impediment to the appropriate use of US military resources in support of homeland operations.

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.³

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](#).

Information Operations

There are basic legal considerations that should be taken into account during all aspects of IO planning and execution. JAGs are available at all levels of command in order to assist with these legal considerations. See [Policy & Legal Considerations for IO](#) in Annex 3-13, [Information Operations](#).

³ More information can be found in the Stafford Act (42 U.S.C. §§ 5121 et seq.).

Intelligence, Surveillance, And Reconnaissance

There are numerous legal issues associated with ISR, especially if ISR operations might impact US persons. ISR activities should be coordinated with JAGs and paralegals to ensure compliance with the law and any existing ROE, as technological advances create numerous legal challenges. Manned and unmanned aircraft will continue to be subject to host-nation overflight and access restrictions in an area of responsibility (AOR). Those limitations are based on international law, custom and practice, and arrangements outlined in the *DOD Foreign Clearance Guide*. See Annex 2-0, [Global Integrated Intelligence, Surveillance, and Reconnaissance Operations](#).

Rescue Operations

JAG personnel 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 in peacetime and wartime throughout 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 perform rescue operations, JAG personnel familiar with these operations should be readily available to advise commanders and be involved from the beginning of rescue planning activities to the reintegration of recovered personnel. For additional information, see Annex 3-50, [Personnel Recovery Operations](#).

Combat Support

JAG corps personnel provide legal advice to commanders on all areas of combat support to include budget, personnel, military justice, claims, SOFA, international agreements, contracting actions, and specialized support in multinational, civil-military, and combat operations. The JAG provides services that maximize the legal readiness of the force on both organizational and personal levels. See Annex 4-0, [Combat Support](#).

Air Reserve Component (ARC) Considerations

Special considerations exist in determining the command relationships when dealing with the Air National Guard (ANG) and the Air National Guard of the United States (when federalized).⁴ The commander exercises command over applicable ANG units and members when they are federalized and in Title 10 status. Administrative control (ADCON) for these federalized units is retained by the ANG Readiness Center. If full mobilization has occurred, command authority is given to the gaining commander. ANG units operating outside of the US or performing federal missions must be 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

⁴ Because both state Air National Guard and the Air National Guard of the United States relatively go hand-in-hand, they are both usually referred to as just Air National Guard (ANG).

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. They are similar to ANG forces in being a part-time force, in that they are not continually in an active duty status, but they are subject to the *Uniform Code of Military Justice* (UCMJ) when performing official duties. 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. AFR forces are commanded by the commander of Air Force Reserve Command (AFRC/CC). The AFRC/CC exercises command of AFRC units and members when they are in a military status. ADCON for these federalized units is retained by the AFRC/CC in all locations short of full mobilization. When AFR forces are involved in training, and not actually engaged in CCDR operations, the operational commander normally exercises training and readiness oversight.⁵ All ARC forces are only called to duty for specific periods of time. Care must be taken that their military status is lawfully maintained if it becomes necessary to extend their term of service.

⁵ More information about ARC use can be found in the current Global Force Management Implementation Guidance. See [Appendix H, Global Force Management](#), in Joint Publication 5-0, [Joint Operation Planning](#).