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FOR DOCTRINE DEVELOPMENT AND EDUCATION



ANNEX 1-04 LEGAL SUPPORT TO OPERATIONS

THE JUDGE ADVOCATE GENERAL'S CORPS SUPPORT TO AIR FORCE OPERATIONS

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The Judge Advocate General's (JAG) Corps Support

Air Force [judge advocates](#) (JAs) support all Air Force operations. However, some types of Air Force operations in support of the commander, Air Force forces (COMAFFOR) merit heightened legal attention including: [air warfare](#); operations in an [irregular warfare](#) (IW) environment; [cyberspace operations](#); [air mobility operations](#); [space operations](#); [special operations](#); [defense support to civilian authorities](#); [information operations](#); [intelligence, surveillance, and reconnaissance](#); [rescue operations](#); [combat support](#); and distributed operations.

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](#) are all affected by international and host-nation law, particularly 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 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.¹ The staff judge advocate (SJA) to the COMAFFOR provides a dedicated legal staff to this practice.

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

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

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

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 Air Force forces (AFFOR) SJA plays a critical role in the planning and execution of indirect 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 LOAC and ROE challenges. Commanders should be aware of the potential for rapidly changing ROE 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](#).

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 must also be reviewed for compliance with applicable international law including LOAC. 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 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.

JAs 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 an agreement is 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*. 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 JAG Corps maintains a cadre of JAs 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 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](#).

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 DODM 5240.01, *Procedures Governing the Conduct of DOD Intelligence Activities*. The *Posse Comitatus Act* (18 U.S.C. §1385) and DODI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, prohibits using members of the Army, and 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 U.S. Constitution reserves to the States the power to protect its 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.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 (IO)

There are basic legal considerations that should be taken into account during all aspects of IO planning and execution. JAs at all levels of command advise on IO. See *Authorities, Responsibilities, and Legal Considerations* in Annex 3-13, *Information Operations*.

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 JAs 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 operational area. 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](#).

Rescue Operations

JAs 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 perform rescue operations, JAs 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 Operations](#).

Combat Support

JAs provide legal advice to commanders on all areas of combat support, including budget, personnel, military justice, claims, SOFA, international agreements, contracting

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

actions, and specialized support in multinational, civil-military, and combat operations. The JA provides services that maximize the legal readiness of the force on both organizational and personal levels. 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 with battlefield 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 decisions concerning the appropriate role of Air Force civilians and contractors in distributed operations. While such issues are largely policy matters, JAs must ensure commanders understand the LOAC 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.
